

# Child Custody And Visitation In Connecticut

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A Guide to Resources in the Law Library

Compiled

by

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**Connecticut Judicial Branch  
Law Libraries**

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“All light is valuable on a darken path.”  
DeQuincy

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# Best Interest of the Child Standard in Connecticut

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“We have consistently held in matters involving child custody that while the rights, wishes and desires of the parents must be considered it is nevertheless the ultimate welfare of the child which must control the decision of the court.” In re Appeal of Kindis, 162 Conn. 239, 242, 294 A.2d 316 (1972).

“The guiding principle in determining custody is the best interest of the child.” Schult v. Schult, 241 Conn. 767, 777, 699 A.2d 134 (1997).

The judge “acts as *parens patriæ* to do what is best for the interest of the child. He is to put himself in the position of a ‘wise, affectionate, and careful parent . . . and make provision for the child accordingly.’” Justice Cardozo in Finlay v. Finlay, 148 NE 624, 626 (1925).

## Sections in this chapter:

- § 1.1 Factors Used by the Courts
- § 1.2 Parental Preference
- § 1.3 The Psychological Parent
- § 1.4 Wishes of the Child
- § 1.5 Parental Relocation Out of State
- § 1.6 Parental Misconduct

## Tables in this chapter:

- Table 1 Criteria Used by the Courts in Determining Best Interest of the Child
- Table 2 ALR Annotations on Factors Used by the Courts
- Table 3 Survey of the States: Best Interest of the Child Standard
- Table 4 Proof of denial of child visitation rights
- Table 5 Proof of justification of denial of visitation rights
- Table 6 Proof as to which parent should be awarded custody of child

## Section 1.1

# Factors Used by the Courts

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- SCOPE:** Bibliographic sources relating to the criteria used by the courts in Connecticut to determine the best interest of the child
- DEFINITIONS:**
- “We continue to adhere to the view that the legislature was acting wisely in leaving the delicate and difficult process of fact-finding in family matters to flexible, individualized adjudication of the particular facts of each case without the constraint of objective guidelines.” *Seymour v. Seymour*, 180 Conn. 705, 710, 433 A.2d 1005 (1980).
- STATUTES:**
- CONN. GEN. STAT. (2003)
    - § 46b-56. Superior Court orders re custody or visitation, the court shall:
      - (b). In making or modifying any order with respect to custody or visitation, the court shall:
        - (1) be guided by the best interest of the child, giving consideration to the wishes of the child if the child is of sufficient age and capable of forming an intelligent preference, provided in making the initial order the court may take into consideration the causes for dissolution of the marriage or legal separation if such causes are relevant in a determination of the best interest of the child and
        - (2) consider whether the party satisfactorily completed participation in a parenting education established pursuant to section 46b-69b.
      - (f) Notwithstanding the provisions of subsection (b) of this section, when a motion for modification of custody or visitation is pending before the court or has been decided by the court and the investigation ordered by the court pursuant to section 46b-6 recommends psychiatric or psychological therapy for a child, and such therapy would, in the court's opinion, be in the best interests of the child and aid the child's response to a modification, the court may order such therapy and reserve judgment on the motion for modification.
    - § 45a-719. Reopening judgment terminating parental rights. “. . . For the purpose of this section, "best interest of the child" shall include, but not be limited to, a consideration of the age of the child, the nature of the relationship of the child with the caretaker of the child, the length of time the child has been in the custody of the caretaker, the nature of the relationship of the child with the birth parent, the length of time the child has been in the custody of the birth parent, any relationship that may exist between the child and siblings or other children in the caretaker's household, and the psychological and medical needs of the child. The determination of the best interest of the child shall not be based on a consideration of the socio-economic status of the birth parent or the caretaker.”

**CASES:**

- Bretherton v. Bretherton, 72 Conn. App. 528, 538, 805 A.2d 766 (2002). “At the very outset of its analysis in Ireland, our Supreme Court announced that it had created the burden shifting scheme to further ‘our commitment to the best interests of the child standard. . . .’ Id., [ Ireland v. Ireland, 246 Conn. 413,] 421. Moreover, after articulating the shifting burdens of proof, our Supreme Court again took the ‘opportunity to reaffirm that the best interests of the child must always govern decisions involving custodial or visitation matters.’ Id., [ 246 Conn. 425,] 430.”
- Crockett v. Pastore, 259 Conn. 240, 250, 789 A.2d 453 (2002). “In Roth [v. Weston], 259 Conn. 202, 223, 789 A.2d 431 (2002)], however, we determined that the best interest of the child was not a sufficiently compelling interest to warrant the state's intrusion into a fit parent's decision regarding visitation.”
- Ford v. Ford, 68 Conn. App. 173, 173-74, 789 A.2d 1104 (2002). “The defendant's claim to the contrary notwithstanding, the trial court properly decided whether the plaintiff should be allowed to relocate with the child pursuant to the statutory (§ 46b-56) best interest of the child standard; because the interests and circumstances of the parties at the postjudgment stage differ from those existing at the time of dissolution, the Ireland factors and its burden-shifting scheme do not apply to relocation issues arising when the initial custody determination is made.”
- Schult v. Schult, 241 Conn. 767, 777, 699 A.2d 134 (1997). “The guiding principle in determining custody is the best interest of the child.
- Garrett's Appeal from Probate, 44 Conn. Supp. 169, 187, 677 A.2d 1000 (1994). “Moreover, the court finds that the defendant's ‘parental acts or deficiencies’ support the conclusion that he should not, in the children's best interests, be their guardian at this time, based on the evidence of events transpiring up to the dates of the Probate Court hearings.”
- Knock v. Knock, 224 Conn. 776, 788-789, 621 A.2d 267 (1993). “[Conn. Gen. Stats. ] Section 46b-56(b) does not require that the trial court award custody to whomever the child wishes; it requires only that the court take the child's wishes into consideration.”
- Rudolewicz v. Rudolewicz, 1 Conn. Sup. Ct. Repts. 664 (1986). *Enumerates 22 factors to be used in determining the best interests of the child.* See [Table 1](#)
- Cappetta v. Cappetta, 196 Conn. 10, 16, 490 A.2d 996 (1985). “In the search for an appropriate custodial placement, the primary focus of the court is the best interest of the child, the child’s interest in sustained growth, development, well-being, and in continuity and stability of its environment.”
- Seymour v. Seymour, 180 Conn. 705, 712, 433 A.2d 1005 (1980). “While psychological parenting is thus one indicator of the best interest of a child, a court has an independent responsibility to assure itself of the suitability of the parent to whom the child is primarily attached.”
- Hall v. Hall, 186 Conn. 118, 124, 439 A.2d 447 (1982). The plaintiff’s wilful disobedience of these court orders . . . evidenced gross disrespect for the law and raised questions about her character, which are relevant to the welfare of the child.”
- Yontef v. Yontef, 185 Conn. 275, 281, 440 A.2d 899 (1981). “We have never held, and decline now to hold, that a trial court is bound to accept the expert opinion of a family relations officer. As in other areas where expert testimony is offered, a trial court is free to rely on whatever parts of an expert’s opinion the court finds probative and helpful.”
- Ridgeway v. Ridgeway, 180 Conn. 533, 541, 429 A.2d 801 (1980). “In this case, the evidence showed that the children were living in a familiar and stable

environment with love and attention from their paternal grandparents; that the plaintiff at times had an adverse effect upon the children; and that the plaintiff's psychological instability was such that it posed a threat to the children's well-being."

- *Trunik v. Trunik*, 179 Conn. 287, 288, 426 A.2d 274 (1979). "... the trial court's order changing the award of custody was based on evidence which revealed: (1) that the plaintiff father had remarried and he and his present wife were capable of caring for his children; and (2) that while the children were home, the defendant mother, inter alia, frequently entertained a variety of nocturnal male visitors."
- *Pi v. Delta*, 175 Conn. 527, 533, 400 A.2d 709 (1978). "Similarly, in accordance with this court's constant emphasis upon consideration for the welfare of minor children, legitimate or not, we perceive no valid reason for denying the admitted natural father of an illegitimate child at the least the opportunity to obtain a judicial determination of custody where, as here, there is an allegation that the present custodian is unfit and that the interests of the children will best be served by a change in custody."

**WEST KEY  
NUMBERS:**

- *Divorce* #298. Grounds for award of custody
- *Parent & Child* #2(3)
- *Infant* #19.2
  - (2) Welfare and best interest of the child
  - (4) Preference & age of child
  - (5) Religion, moral and social factors
- *Infant* #19.3
  - Proceedings affecting custody. Determination of right to custody

**ENCYCLOPEDIAS:**

- 27C C.J.S. *Divorce* (1986).
  - §§ 620-628. Considerations affecting child custody in general
    - § 621. Interest and welfare of child
    - § 622. Preference of the child
- 67A C.J.S. *Parent & Child* (1978).
  - §§ 20-30. Considerations affecting custody of child
- 59 AM. JUR. 2D *Parent & Child* (2002).
  - § 30. Custody disputes between parents—factors affecting choice
- 24A AM. JUR. 2D *Divorce & Separation* (1998).
  - §§ 931-938. Factors in determining custody

**TEXTS &  
TREATISES**

- 8 ARNOLD H. RUTKIN ET AL. CONNECTICUT PRACTICE SERIES. FAMILY LAW AND PRACTICE WITH FORMS (2d ed. 2000).
  - § 42.24 Factors for consideration by the court
- 2 FAMILY LAW PRACTICE IN CONNECTICUT (1995).
  - Chapter 10. Child Custody and Visitation by Jeffrey D. Ginzberg
    - §10.26 Factors in awarding custody and visitation
    - §10.27 Focus of the Court
- 1 ALEXANDER LINDEY AND LOUIS I. PARLEY, LINDEY AND PARLEY ON SEPARATION AGREEMENTS AND ANTENUPTIAL CONTRACTS (2002).
  - Chapter 20. Child custody
    - § 20.72. Criteria
- 3 ARNOLD H. RUTKIN ET AL., FAMILY LAW & PRACTICE (2001).
  - Chapter 32. Child custody and visitation
    - § 32.06. Standards used to determine custody between parents [5]. Application of the Best Interests Standard



- 2 SANDRA MORGAN LITTLE, CHILD CUSTODY AND VISITATION (2002).  
Chapter 10. Custody disputes between parents  
§ 10.06. Standards for selecting the custodial parent  
[2]. Best interest of the child
- DONALD T. KRAMER, LEGAL RIGHTS OF CHILDREN (2d ed. 1994).  
Chapter 2. Child custody  
§ 2.04. Best interest of the child rule

**LAW REVIEWS:**

- Lloyd Cutsumpas , *Contested Custody In Connecticut*, 54 CONNECTICUT BAR JOURNAL 193-212 (1980). *List of factors used to determine “best interest of the child” from the Family Relations Office Manual.*

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**Table 1: Criteria Used by the Courts in Determining Best Interest of the Child**

#	Factors	Authorities Cited
1.	Parenting skills	<i>Cappetti v. Cappetta</i> , 196 Conn. 10,16-17, 490 A.2d 996 (1985)
2.	"Each person's relationship with the child" <sup>1</sup> "emotional ties of each parent with the child" <sup>2</sup> "the child's primary psychological parent" <sup>3</sup>	<sup>1</sup> <i>Cappetti v. Cappetta</i> , 196 Conn. 10, 17, 490 A.2d 996 (1985) <sup>2</sup> <i>Seymour v. Seymour</i> , 180 Conn. 705, 711, 433 A.2d 1005 (1980) <sup>3</sup> <i>Seymour</i> , supra, at 711-712
3.	Character of parent by reason of willful disobedience of court orders	<i>Hall v Hall</i> , 186 Conn. 118, 124, 439 A.2d 447 (1982) <i>Stewart v. Stewart</i> , 177 Conn. 401, 407, 418 A.2d 62 (1979) <i>Simmons v. Simmons</i> , 172 Conn. 341, 348, 374 A.2d 1040 (1977)
4.	Willingness to facilitate visitation by the other parent.	<i>Seymour v. Seymour</i> , 180 Conn. 705, 713, 433 A.2d 1005 (1980)
5.	"[P]ast behavior as it relates to parenting ability . . . ."	<i>Seymour v. Seymour</i> , 180 Conn. 705, 711, 433 A.2d 1005 (1980) <i>Yontef v. Yontef</i> , 185 Conn. 275, 283, 440 A.2d 899 (1981)
6.	Family Relations Division Report recommendations	See <i>Yontef v. Yontef</i> , 185 Conn. 275, 281, 440 A.2d 899 (1981)
7.	Independent advice of attorney appointed to represent minor children	See <i>Yontef v. Yontef</i> , 185 Conn. 275, 281, 440 A.2d 899 (1981)
8.	Credibility	<i>Yontef v. Yontef</i> , 185 Conn. 275, 277, 440 A.2d 899 (1981)
9.	"[M]anipulative and coercive behavior in . . . efforts to involve children in the marital dispute."	<i>Yontef v. Yontef</i> , 185 Conn. 275, 281, 440 A.2d 899 (1981)
10.	A parent's behavior and its effects on the child(ren).	<i>Yontef v. Yontef</i> , 185 Conn. 275, 282, 440 A.2d 899 (1981)

11.	Continuity and stability of environment.	<i>Cappetti v. Cappetta</i> , 196 Conn. 10, 16, 490 A.2d 996 (1985)
12.	"[T]he flexibility of each parent to best serve the psychological development and growth of the child."	<i>Seymour v. Seymour</i> , 180 Conn. 705, 711, 433 A.2d 1005 (1980)
13.	Which parent is more willing and able to address medical and educational problems of the child and to take appropriate steps to have them treated and corrected."	<i>Faria v. Faria</i> , 38 Conn. Supp. 37, 47-50, 456 A.2d 1205 (1982)
14	"[C]hildren living in a familiar and stable environment with love and attention from their paternal grandparents."	<i>Ridgeway v. Ridgeway</i> , 180 Conn..533, 541, 429 A.2d 801 (1980).
15	Psychological instability of one parent posing a threat to the children well-being.	<i>Ridgeway v. Ridgeway</i> , 180 Conn..533, 541, 429 A.2d 801 (1980)
16	Recommendation that one party immediately commence in-patient treatment.	<i>Ridgeway v. Ridgeway</i> , 180 Conn..533, 541, 429 A.2d 801 (1980)
17	Visitation having an adverse effect on the child at times.	<i>Ridgeway v. Ridgeway</i> , 180 Conn..533, 540, 429 A.2d 801 (1980)
18	Remarriage.	<i>Trunik v. Trunik</i> , 179 Conn. 287, 289, 426 A.2d 274 (1979)
19	Parental sexual activity,	<i>Trunik v. Trunik</i> , 179 Conn. 287, 288, 426 A.2d 274 (1979)
20	"[C]onsistency in parenting and life style, insofar as these factors might affect the child's growth, development and well being."	<i>Seymour v. Seymour</i> , 180 Conn. 705, 711, 433 A.2d 1005 (1980)
21	"[T]he time each parent would be able to devote to the child on a day-to-day basis."	<i>Seymour v. Seymour</i> , 180 Conn. 705, 711, 433 A.2d 1005 (1980)
22	Untidy condition of home, alcoholism, leaving home unattended, and emotional problems.	<i>Simmons v. Simmons</i> , 172 Conn. 341, 346, 374 A.2d 1040 (1977)

\*Rudolewicz v. Rudolewicz, 1 Conn. Sup. Ct. Repts. 664, 666 (1986).

**Table 2 ALR Annotations on Factors Used by the Courts**

ALR Annotations	
Factors Used by Courts	
Subject	Citation
Age of parent	Danny R. Veilleux, Annotation, <i>Age Of Parent As Factor In Awarding Custody</i> , 34 ALR5th 57 (1995).
AIDS	Claudia G. Catalano, Annotation, <i>Child Custody And Visitation Rights Of Persons Infected With AIDS</i> , 86 ALR4th 211 (1991).
Continuity of residence	Carol A. Crocca, Annotation, <i>Continuity Of Residence As Factor In Contest Between Parent And Nonparent For Custody Of Child Who Has Been Residing With Nonparent—Modern Status</i> , 15 ALR5th 692 (1993).
Disability of parent	Kristine Cordier Karnezis, Annotation, <i>Parent's Physical Disability Or Handicap As Factor In Custody Award Or Proceedings</i> , 3 ALR4th 1044 (1981).
Domestic violence	Jack M. Dagleish, Annotation, Construction and effect of statutes mandating consideration of, or creating presumption regarding, domestic violence in awarding custody of children, 51 ALR5th 241(1997).
Drug use by parent	Mary E. Taylor, Annotation, <i>Parent's Use Of Drugs As Factor In Award Of Custody Of Children, Visitation Rights, Or Termination Of Parental Rights</i> , 20 ALR5th 534 (1994).
Extramarital sexual relations	Diane M. Allen, Annotation, <i>Propriety Of Provision Of Custody Or Visitation Order Designed To Insulate Child From Parent's Extramarital Sexual Relationships</i> , 40 ALR4th 812 (1985).
Foreign country (residence)	M. David LeBrun, Annotation, <i>Propriety Of Awarding Custody Of Child To Parent Residing Or Intending To Reside In Foreign Country</i> , 20 ALR4th 677 (1983).
Grandparent	<ul style="list-style-type: none"> <li>• Annotation, <i>Award Of Custody Of Child Where Contest Is Between Child's Father And Grandparent</i>, 25 ALR3d 7 (1969).</li> <li>• D.E. Yteberg, Annotation, <i>Award Of Custody Of Child Where Contest Is Between Child's Parent And Grandparents</i>, 31 ALR3d 1187 (1970).</li> <li>• D.E. Yteberg, Annotation, <i>Award Of Custody Of Child Where Contest Is Between Child's Mother And Grandparent</i>, 29 ALR3d 366 (1970).</li> </ul>
Grounds for divorce	Annotation, <i>Award Of Custody Of Child To Parent Against Whom Divorced Is Decreed</i> , 23 ALR3d 6 (1969).
Mental health	Linda A. Francis, Annotation, <i>Mental Health Of Contesting Parent As Factor In Award Of Child Custody</i> , 53 ALR5th 375 (1997).

## Factors Used by Courts

Preference or wishes of child	<ul style="list-style-type: none"> <li>Wanda Ellen Wakefield, Annotation, <i>Desire Of Child As To Geographic Location Of Residence Or Domicile As Factor In Awarding Custody Or Terminating Parental Rights</i>, 10 ALR4th 827 (1981).</li> <li>Annotation, <i>Child's Wishes As Factor In Awarding Custody</i>, 4 ALR3d 1396 (1965).</li> </ul>
Primary caretaker role	Annotation, <i>Primary Caretaker Role Of Respective Parents As Factor In Awarding Custody Of Child</i> , 41 ALR4th 1129
Religion	George L. Blum, Annotation, <i>Religion As Factor In Visitation Cases</i> , 95 ALR5th 533 (2002).
Relocation	Jay M. Zitter, Annotation, <i>Custodial Parent's Relocation As Grounds For Change Of Custody</i> , 70 ALR5th 377 (1999).
Separating children	Jay M. Zitter, Annotation, <i>Child Custody: Separating Child By Custody Awards To Different Parents—Post-1975 Cases</i> , 67 ALR4th 354 (1989).
Sexual orientation	<ul style="list-style-type: none"> <li>Caroll J. Miller, Annotation, <i>Visitation Rights Of Homosexual Or Lesbian Parent</i>, 36 ALR4th 997 (1985).</li> <li>Wanda Ellen Wakefield, Annotation, <i>Initial Award Or Denial Of Child Custody To Homosexual Or Lesbian Parent</i>, 6 ALR4th 1297 (1981).</li> </ul>
Smoking	Harriet Dinegar Milks, Annotation, <i>Smoking As Factor In Child Custody And Visitation Cases</i> , 36 ALR5th 377 (1996).
Stepparent	Wendy Evans Lehmann, Annotation, award of custody of child where contest is between natural parent and stepparent, 10 ALR4th 767 (1981).
Working mother	Edward L. Raymond, Annotation, <i>Mother's Status As "Working Mother" As Factor In Awarding Child Custody</i> , 62 ALR4th 259 (1988).

## Section 1.2

# Parental Preference

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### SCOPE:

Bibliographic sources relating to presumption in Connecticut that it is in the best interest of the child to be in (1) the joint custody of their parent and (2) there is no presumption in Connecticut favoring one parent over the other.

### DEFINITION:

- “If the child’s best interest require for him to have a change in custody, it must be made; if they require for him to be placed in the custody of the father rather than the mother, that too must follow.” Simons v. Simons, 172 Conn. 341, 350, 374 A.2d 1040 (1977).
- **Parent vs. Non parent:** “. . . 46b-56b provides that in any custody dispute pitting parent against nonparent, there is a presumption that it is in the best interest of the child that custody be awarded to the parent, which presumption may be rebutted.” Bristol v. Brundage, 24 Conn. App. 402, 405, 589 A.2d 1 (1991).

### STATUTES:

- CONN. GEN. STAT. (2003)  
§ 46b-56a. **Joint custody Presumption.**  
There shall be a presumption, affecting the burden of proof, that joint custody is in the best interest of a minor child . . . .  
§ 46b-56b. Presumption re best interest of child to be in custody of parent.  
(b) In any dispute as to the custody of a minor child involving a parent and a nonparent, there shall be a presumption that it is in the best interest of the child to be in the custody of the parent, which presumption may be rebutted by showing that it would be detrimental to the child to permit the parent to have custody.

### COURT CASES

- Doe v. Doe, 244 Conn. 403, 455, 710 A.2d 1297 (1998). “As these authorities make clear, the presumption does not mean that the nonparent must, in order to rebut it, prove that the parent is unfit. It means that the parent has an initial advantage, and that the nonparent must prove facts sufficient to put into issue the presumed fact that it is in the child's best interest to be in the parent's custody. Once those facts are established, however, the presumption disappears, and the sole touchstone of the child's best interests remains irrespective of the parental or third party status of the adults involved. In that instance, then, neither adult - the parent or the third party - enjoys any advantage or suffers any disadvantage as a result of his or her parental or third party status.”
- Schult v. Schult, 40 Conn. App. 675, 676, 672 A.2d 959 (1996). “The principal issue in this appeal is the proper construction and application of General Statutes §46b-56b, which creates a rebuttable presumption ‘that it is

in the best interest of the child to be in the custody of the parent' in any dispute as to the custody of a minor child involving a parent and a nonparent.”

- Antedomenico v. Antedomenico, 142 Conn. 558, 562, 115 A.2d 558 (1955). “The contest is not one primarily to determine the rights of the respective parties but rather the best interest of the child.”

#### **ENCYCLOPEDIAS**

- Thomas R. Trenkner, Annotation, *Modern Status Of Maternal Preference Rule Or Presumption In Child Custody Cases*, 70 ALR3d 262 (1976).
- *Child Custody Determination On Termination Of Marriage*, 34 POF2d 407 (1983).
  - § 2. Rights of respective parents
  - § 3. Determining factors

#### **TEXTS & TREATISES:**

- 1 ALEXANDER LINDEY AND LOUIS I. PARLEY, LINDEY AND PARLEY ON SEPARATION AGREEMENTS AND ANTENUPTIAL CONTRACTS (2002).
  - Chapter 20. Child custody
    - § 20.72. Criteria
    - § 20.73. Custodial arrangements
- 3 ARNOLD H. RUTKIN ET AL., FAMILY LAW & PRACTICE (2001).
  - Chapter 32. Child custody and visitation
    - §32.01[2]. Historical Background
      - [a]. Paternal preference and rights of father
      - [b]. Maternal preference
      - [c]. Gender-neutral best interests
    - § 32.06. Standards used to determine custody between parents
      - [1]. Statutory factors
      - [c]. joint custody
    - [5]. Application of Best Interest Standard
- 1 DONALD T. KRAMER, LEGAL RIGHTS OF CHILDREN (2d ed. 1994).
  - Chapter 2. Child custody
    - §2.15 Preference of natural parent(s) over others; Generally
    - §2.16 Preference of natural parent (s) over grandparent(s)
    - §2.17 Preference of natural parent over adult siblings or other relatives
    - § 2.23. Joint custody
- 2 SANDRA MORGAN LITTLE, CHILD CUSTODY AND VISITATION (2002).
  - Chapter 10. Custody disputes between parents
    - § 10.04. Relative rights of mothers and fathers; married parents
    - § 10.05. Relative rights of mothers and fathers; nonmarital parents
    - § 10.06. Standards for selecting the custodial parent

#### **COMPILER:**

Lawrence Cheeseman, Supervising Law Librarian, Connecticut Judicial Department, Law Library at Middletown, One Court Street, Middletown, CT 06457. (860) 343-6560. [EMAIL](#)

**Table 3 Survey of the States: Best Interest of the Child Standard**

Statute and case citations	Rutkin, A. <u>Family Law and Practice</u> (M. Bender). §32.06 “Standards used to determine custody.” Footnote 2.
Statute and case citations	ALEXANDER LINDEY AND LOUIS I. PARLEY, LINDEY ON SEPARATION AGREEMENTS AND ANTENUPTIAL CONTRACTS , 2d ed. (1999). §14.02 “Best interests” Standard. Footnote 1.
Case citations	DONALD T. KRAMER, LEGAL RIGHTS OF CHILDREN (2D ED. 1994). §2.04 Best interest of the child rule. Footnote 71, p. 38.
Statute and case citations	Susan A. Lentz, <i>Cause of Action for Modification of Child Custody Based on Neglect of Child by Custodial Parent</i> , 19 Causes of Action 143 §3, pp. 167-168 (1989).



## Section 1.3

# The Psychological Parent

*A Guide to Resources in the Law Library*

### **SCOPE:**

Bibliographic sources relating to the identification of a child's psychological parent as a factor in determining the best interest of the child.

### **DEFINITION:**

- “While psychological parenting is thus one indicator of the best interest of a child, a court has an independent responsibility to assure itself of the suitability of the parent to whom the child is primarily attached.” Seymour v. Seymour, 180 Conn. 705, 712, 433 A.2d 1005 (1980).

### **COURT CASES**

- In Re Brea B., 75 Conn. App. 466, 473, 816 A.2d 707 (2003). “The child experienced her great aunt, rather than her mother, as her psychological parent and expressed a clear preference to have no further contact with her mother.  
On the basis of the foregoing, we conclude that the court's finding that there was no ongoing parent-child relationship was not clearly erroneous.”
- Azia v. Dilascia, 64 Conn. App. 540, 552-553, 780 A.2d 992 (2001). “The fact that the defendant had been the child's primary psychological parent and caretaker in the past was relevant but was not dispositive on the issue of physical custody. Our Supreme Court in Blake v. Blake, supra, 207 Conn. 224-25, specifically indicated that an evaluation of the past was not enough. Although the mother had been important in the past and the father had not been as involved in the child's life for her first several years, he had become very involved in her life at the time of trial. The child's own therapist acknowledged that both parties were psychological parents of the child. We conclude that the court properly applied the standard established in Blake.”
- Temple v. Meyer, 208 Conn. 404, 410, 544 A.2d 629 (1988). “Even if the plaintiff had demonstrated that he has been . . . psychological parent, such a finding would not have demonstrated that visitation continued to be in the best interest of the child.”
- Cappetta v. Cappetta, 196 Conn. 10, 490 A.2d 996 (1985).
- Seymour v. Seymour, 180 Conn. 705, 711, 433 A.2d 1005 (1980). “. . . the concept of the psychological parent is not a fixed star by which custody decisions can invariably be guided.”

### **TEXTS & TREATISES**

- 8 ARNOLD H. RUTKIN ET AL. CONNECTICUT PRACTICE SERIES. FAMILY LAW AND PRACTICE WITH FORMS (2d ed. 2000).  
§42.25 The Psychological Parent
- 2 FAMILY LAW PRACTICE IN CONNECTICUT (1995).  
Chapter 10. Child Custody and Visitation by Jeffrey D. Ginzberg  
§ 10.28 Psychological Parent
- 1 DONALD T. KRAMER, LEGAL RIGHTS OF CHILDREN (2d ed. 1994).  
Chapter 2. Child custody  
§ 2.08. The “Psychological Parent” doctrine

**LAW REVIEWS:**

- Martha F. Leonard and Sally Provence, *The Development Of Parent-Child Relationships And The Psychological Parent*, 53 CONNECTICUT BAR JOURNAL 320 (August 1979).

**COMPILER:**

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**Table 4 Proof of denial of child visitation rights**

<b>Proof of Denial of Child Visitation Rights</b> 2 POF2d 801 (1974)	
A. Elements of Proof	§5. Guide and checklists
B. Testimony of Noncustodial Parent (Situation 1)	§ 6. History of visitation, and attempts to exercise rights
C. Testimony of Noncustodial Parent (Situation 2)	§7. Alienation of affection

**Table 5 Proof of justification of denial of visitation rights**

<b>Proof of Justification of Denial of visitation rights</b> 2 POF2d 808 (1974)	
A. Elements of proof	§8 Guide and checklist
B. Testimony of Custodial Parent	§9 Marital history and terms of decree §10 Exercise of visitation by noncustodian §11 Denial of visitation and justification
C. Testimony of Noncustodial Parent on Cross-Examination	§12 Motivation of noncustodian; reason for nonexercise of visitation rights
D. Testimony of Third Party with Knowledge of Situation	§13 Corroboration of custodian's testimony
E. Testimony of Police Officer Regarding Incident	§14 Expert testimony regarding noncustodian's behavior

**Table 6 Proof as to which parent should be awarded custody of child**

<b>Proof As To Which Parent Should Be Awarded Custody Of Child</b> 34 POF2d 426 (1983)	
A. Elements of proof	§ 11 Guide and checklists
<b>B. Illustrative Case in Which Father Seeks Custody of Children</b> 1. Evidence Offered on Father's Behalf	
a. Testimony of Father	§ 12 Introduction; mother's departure with children § 13 Neighbor environment § 14 Church attendance § 15 Witness' employment § 16 Provisions for child care § 17 Mother's neglect of children § 18 Mother's poor housekeeping § 19 Mother's mental problems—Violent temper, other unusual behavior § 20 — Depression and suicidal tendencies § 21 Mother's alcoholism
b. Testimony of Police Officer	§ 22 Neighbor environment
c. Testimony of Neighbor	§ 23 Mother's mental problems, alcoholism, and poor housekeeping
d. Testimony of child	§ 24 Child's wishes as to custody § 25 Mother's attempted alienation of affection
2. Evidence Offered on Mother's Behalf	
a. Testimony of Mother	§ 26 Introductions, relationship with husband and children § 27 Recognition of drinking problem § 28 Response to allegations as to poor housekeeping and child neglect
	[cont'd]

## Proof As To Which Parent Should Be Awarded Custody Of Child

34 POF2d 426 (1983)

b. Testimony Of Court-Appointed Psychologist	<p>§ 29 Introductions, recommendation as to custody of children</p> <p>§ 30 Tests used as basis for recommendations</p> <p>§ 31 Response to mother's alleged emotional instability</p> <p>§ 32 Response to mother's alleged alcoholism</p>
3. Father's Cross-Examination of Court-Appointed Psychologist	<p>§ 33 Possible inaccuracy of diagnosis of mother's condition—Fallibility of tests</p> <p>§ 34 —Lack of reasonable justification for mother's behavior</p> <p>§ 35 —Possibility of different diagnosis by different psychologist</p> <p>§ 36 Poor prognosis for mother's recovery; re-evaluation of recommendation</p>

# Section 1.4

## Wishes of the Child

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*A Guide to Resources in the Law Library*

- SCOPE:** Bibliographic sources relating to the wishes of a child as a factor in determining the best interest of the child
- STATUTES:**
- CONN. GEN. STAT. (2003).  
§ 46b-56(b). “In making or modifying any order with respect to custody or visitation, the court shall (1) be guided by the best interests of the child, giving consideration to the wishes of the child if the child is of sufficient age and capable of forming an intelligent preference . . . .”
- COURT CASES**
- Azia v. Dilascia, 64 Conn. App. 540, 546, 780 A.2d 992 (2001). “The defendant first claims that the court improperly failed to consider the child’s desire to live with her mother. Specifically, the defendant argues that the court improperly discounted the child’s preference without finding that the child was not of a sufficient age or was incapable of forming an intelligent preference. We disagree.”
  - Knock v. Knock, 224 Conn. 776, 788, 621 A.2d 267 (1993). “Section 46b-56(b) does not require that the trial court award custody to whomever the child wishes; it requires only that the court take the child’s wishes into consideration.”
  - Faria v. Faria, 38 Conn. Supp. 37, 40, 456 A.2d 1205 (1982). “In this case it is concluded that the minor child, five years old, at the time of the hearing, is not of sufficient age or capable of forming an intelligent preference.
  - Gennarini v. Gennarini, 2 Conn. App. 132, 137, 477 A.2d 674 (1984). “First, whether the child’s preferences and feelings as to custody and visitation are a significant factor in the court’s ultimate determination of the best interest of the child will necessarily depend on all the facts of the particular case, including the child’s age and ability intelligently to form and express those preferences and feelings.”
- TEXTS & TREATISES**
- 8 ARNOLD H. RUTKIN ET AL. CONNECTICUT PRACTICE SERIES. FAMILY LAW AND PRACTICE WITH FORMS (2d ed. 2000).  
§ 42.27. Preference of the child
  - 2 FAMILY LAW PRACTICE IN CONNECTICUT (1995).  
Chapter 10. Child Custody and Visitation by Jeffrey D. Ginzberg  
§10.32. Child’s preference
  - 2 SANDRA MORGAN LITTLE, CHILD CUSTODY AND VISITATION (2002).  
Chapter 10. Custody disputes between parents.  
§ 10.08. The wishes of the child  
[1]. In general  
[2]. Consideration of the child’s preference  
[3]. Factors affecting the weight given a child’s preference  
[4]. Procedures for ascertaining the child’s preference

- 1 ALEXANDER LINDEY AND LOUIS I. PARLEY, LINDEY AND PARLEY ON SEPARATION AGREEMENTS AND ANTENUPTIAL CONTRACTS (2002).  
Chapter 20. Child custody  
§ 20.72[2][c]. Child's Wishes
- 1 DONALD T. KRAMER, LEGAL RIGHTS OF CHILDREN (2d ed. 1994).  
Chapter 2. Child custody  
§ 2.06. The child's custodial preference  
§ 2.07. —Manner of eliciting the child's custodial preference

**LAW REVIEWS:**

- Lloyd Cutsumpas , *Contested Custody In Connecticut*, 54 CONNECTICUT BAR JOURNAL 193-212 (1980).

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# Section 1.5

## Parental Relocation Out of State

*A Guide to Resources in the Law Library*

### **SCOPE:**

Bibliographic sources relating to a parent's decision to relocate child out of state as a factor in determining the best interest of the child

### **COURT CASES**

- Bretherton v. Bretherton, 72 Conn. App. 528, 541, 805 A.2d 766 (2002). "Our Supreme Court did not intend for the burden shifting analysis [Ireland v. Ireland] to act as a means to preclude an inquiry into the best interest of the child. Accordingly, it does not follow that evaluating the best interest of the child, despite a custodial parent's inability to prove the legitimacy of a proposed relocation by a preponderance of the evidence, in any way erodes the purpose and goal of the burden shifting scheme."
- Ford v. Ford, 68 Conn. App. 173, 173-74, 789 A.2d 1104 (2002). "The defendant's claim to the contrary notwithstanding, the trial court properly decided whether the plaintiff should be allowed to relocate with the child pursuant to the statutory (§ 46b-56) best interest of the child standard; because the interests and circumstances of the parties at the postjudgment stage differ from those existing at the time of dissolution, the Ireland factors and its burden-shifting scheme do not apply to relocation issues arising when the initial custody determination is made."
- Ireland v. Ireland, 246 Conn. 413, 428, 717 A.2d 676 (1998). "In summary, we hold, therefore, that a custodial parent seeking permission to relocate bears the initial burden of demonstrating, by a preponderance of the evidence, that (1) the relocation is for a legitimate purpose, and (2) the proposed location is reasonable in light of that purpose. Once the custodial parent has made such a prima facie showing, the burden shifts to the noncustodial parent to prove, by a preponderance of the evidence, that the relocation would not be in the best interests of the child."
- Blake v. Blake, 207 Conn. 217, 223, 541 A.2d 1201 (1988). "Both parents agreed upon joint legal custody, but they disagreed about whether the defendant should have joint physical custody. Under these circumstances, 46b-56a (a) permits a court to award joint legal custody, but to award physical custody to one parent. The term 'joint custody' used in the judgment in the present case implies that the court awarded joint legal custody, but its specific provisions concerning removal of the children by the plaintiff and visitation by the defendant make it clear that primary physical custody has been awarded to the plaintiff. We hold that a court under 46b-56a (a) may award joint legal custody, when both parents agree, but at the same time deny joint physical custody, when both parents have not agreed to such an award, provided that the court finds that



such an award is appropriate under 46b-56a (b).”

- Presutti v. Presutti, 181 Conn. 622, 436 A.2d 299 (1980). “The controlling principle in a determination respecting custody is that the court shall be guided by the best interests of the child. General Statutes 46b-56 (b) . . . . In determining what is in the best interests of the child, the court is vested with a broad discretion.”

**TEXTS &  
TREATISES**

- 8 ARNOLD H. RUTKIN ET AL. CONNECTICUT PRACTICE SERIES. FAMILY LAW AND PRACTICE WITH FORMS (2d ed. 2000).  
§ 42.35 Parental residence within or outside Connecticut
- 2 FAMILY LAW PRACTICE IN CONNECTICUT (1995).  
Chapter 10. Child Custody and Visitation by Jeffrey D. Ginzberg  
§ 10.36 Parental relocation outside of the state of Connecticut

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# Section 1.6

## Parental Misconduct

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*A Guide to Resources in the Law Library*

### **SCOPE:**

Bibliographic sources relating to a parental misconduct as a factor in determining the best interest of the child

### **STATUTES:**

- GENERAL STATUTES OF CONNECTICUT (2003)
  - § 46b-56. Superior Court orders re custody or visitation, the court shall:
    - (b). In making or modifying any order with respect to custody or visitation, the court shall:
      - (1) be guided by the best interest of the child, giving consideration to the wishes of the child if the child is of sufficient age and capable of forming an intelligent preference, provided in making the initial order the court may take into consideration the causes for dissolution of the marriage or legal separation if such causes are relevant in a determination of the best interest of the child and
      - (2) consider whether the party satisfactorily completed participation in a parenting education established pursuant to section 46b-69b.

### **COURT CASES**

- Cappetta v. Cappetta, 196 Conn. 10, 17, 490 A.2d 996 (1985). “It may, however, be useful to add a cautionary note that this court has consistently rejected ‘any presumption that a parent's lifestyle necessarily has an adverse effect on a child.’”
- Greenwood v. Greenwood, 191 Conn. 309, 464 A.2d 771 (1983).
- Hall v. Hall, 186 Conn. 118, 439 A.2d 447 (1982).
- Faria v. Faria, 38 Conn. Supp. 37, 456 A.2d 1205 (1982).
- Yontef v. Yontef, 185 Conn. 275, 283, 440 A.2d 899(1981). “In the exercise of its awesome responsibility to find the most ‘salutary custodial arrangement for the children of divorce, the court must however take account of the parents' past behavior, since it must evaluate their present and future parenting ability and the consistency of their parenting for the purpose of determining which parent will better foster the children's growth, development and well-being.”
- Adams v. Adams, 180 Conn. 498, 430 A.2d 19 (1980).
- Friedman v. Friedman, 180 Conn. 132, 439 A.2d 823 (1980).
- Seymour v. Seymour, 180 Conn. 705, 713, 433 A.2d 1005 (1980). “Once it is definitively established . . . that each parent is loving, caring and otherwise suitable, the court must look to other factors to come to a decision about custody. The court was not in error in basing its award of custody to the mother on . . . her willingness to facilitate visitation by the father.”

### **ENCYCLOPEDIAS:**

- 24A AM. JUR 2d *Divorce & Separation* (1998).
  - § 936. Effect of parent's misconduct

**TEXTS &  
TREATISES**

- 8 ARNOLD H. RUTKIN ET AL. CONNECTICUT PRACTICE SERIES. FAMILY LAW AND PRACTICE WITH FORMS (2d ed. 2000).
  - § 42.33. Parental misconduct as to custody
  - § 42.34 Other parental misconduct
- 3 ARNOLD H. RUTKIN ET AL., FAMILY LAW & PRACTICE (2001).
  - Chapter 32. Child custody and visitation
    - § 32.06[5][f]. Moral fitness
- 1 ALEXANDER LINDEY AND LOUIS I. PARLEY, LINDEY AND PARLEY ON SEPARATION AGREEMENTS AND ANTENUPTIAL CONTRACTS (2002).
  - Chapter 20. Child custody
    - § 20.72[2][i]. Moral character
      - [i]. In general
      - [ii]. Adultery and promiscuity
      - [iii]. Drugs and alcohol addiction
      - [iv]. Sexual orientation

**COMPILER:**

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# Chapter 2

## Child Custody Actions in Connecticut

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*A Guide to Resources in the Law Library*

- “**Joint Custody**’ means an order awarding legal custody of the minor child to both parents, providing for joint decision-making by the parents and providing that physical custody shall be shared by the parents in such a way as to assure the child of continuing contact with both parents.” Conn. Gen. Stat. §46b-56a(a)
- “**Share physical custody** means a situation in which the noncustodial parent exercises visitation or physical care and control of the child for periods substantially in excess of a normal visitation schedule. An equal sharing of physical care and control of the child is not required for a finding of shared physical custody.” CONN. AGENCIES REGS. § 46B-215A-1(22) *Child Support and Arrearage Guidelines*
- “**Split custody** means a situation in which there is more than one child in common and each parent is the custodial parent of at least one of the children.” CONN. AGENCIES REGS. § 46B-215A-1(23) *Child Support and Arrearage Guidelines*
- **Child of the marriage:** “...the meaning of that concept, in the context of a marital dissolution case, is limited to a child conceived by both parties, a child adopted by both parties, a child born to the wife and adopted by the husband, a child conceived by the husband and adopted by the wife, and a child born to the wife and conceived through artificial insemination by a donor pursuant to §§ 45a-771 through 45a-779.” *Doe v. Doe*, 244 Conn. 403, 435 (1998).
- “The child of the marriage and the parent of the child are two sides of the same coin... Thus, it confines the meaning of **parentage** to a child conceived by both parties, or to a child who either had been adopted by both parties or was a natural child of one party who had been adopted by the other.” *Doe v. Doe*, 244 Conn 403, 439 (1998).

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## **Web sites:**

[http://www.larcc.org/pamphlets/children\\_family.htm](http://www.larcc.org/pamphlets/children_family.htm)  
[http://www.law.cornell.edu/topics/child\\_custody.html](http://www.law.cornell.edu/topics/child_custody.html)  
[http://www.nolo.com/encyclopedia/div\\_ency.html#Subtopic82](http://www.nolo.com/encyclopedia/div_ency.html#Subtopic82)  
<http://www.findlaw.com/01topics/15family/sites.html>

## **Treated Elsewhere:**

- Adoption in Connecticut
- Child Abuse and Neglect in Connecticut

# Section 2.1

## Child Custody Actions

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*A Guide to Resources in the Law Library*

**SCOPE:**

Bibliographic resources relating to child custody and unmarried parents, form preparation and procedure in custody actions where parents are unmarried or live separately, and the factors considered in awarding custody.

**SEE ALSO:**

[Best Interest of the Child Standard in Connecticut](#)

**STATUTES:**

CONN. GEN. STAT. (2003)

- Chapter 319o *Department of Social Services*
  - § 17b-27 Voluntary acknowledgment of paternity program.
- Chapter 802h, Part II *Guardians of the Person of the Minor*, §§45a-603 et seq.
  - § 45a-606 Father and mother joint guardians.
  - § 45a-607 Temporary custody of minor pending application to probate court for removal of guardian or termination of parental rights.
- Chapter 815j *Dissolution of Marriage, Legal Separation and Annulment*
  - § 46b-56 Superior Court orders re custody, care and therapy of minor children in actions for dissolution of marriage, legal separation and annulment...
  - § 46b-61 Orders re Children where parents live separately.
  - § 46b-64 Orders of court prior to return day of complaint.
  - § 46b-66 Review of agreements; incorporation into decree.
  - § 46b-69b Parenting Education Program. Required.
- Chapter 815p *Uniform Child Custody Jurisdiction & Enforcement Act*
  - § 46b-115a Definitions
  - § 46b-115m Modification of custody determination of another state
  - § 46b-115w Procedure for registering an out-of-state child custody order
  - §§ 46b-115x—46b-115gg Procedure for enforcement of child custody determination
- Chap. 815y, *Paternity Matters*, §§46b-160 et seq.
  - § 46b-172 Acknowledgment of paternity and agreement to support.  
[amended by 1999 CONN. ACTS 193 §7]
  - § 46b-172a Claim for paternity by putative father ... Rights and responsibilities upon adjudication or acknowledgment of paternity. [amended by 1999 CONN. ACTS 193 §7]
- Chapter 816 Support Part II *Obligations of Relatives*
  - § 46b-215 Relatives obliged to furnish support, when.
  - § 46b-215(b) Attorney General as party to the case when person is receiving public assistance.

## **COURT RULES**

CONNECTICUT PRACTICE BOOK (2004 ed.)

- Chapter 25 *Superior Court – Procedure in Family Matters*
  - § 25-3 Action for Custody of Minor Child
  - § 25-5 Automatic Orders Upon Service of Complaint
  - § 25-9 Answer, Cross Complaint, Claims for Relief by Defendant
  - § 25-24 Motions
  - § 25-28 Order of Notice
  - § 25-30 Statements to be Filed (Financial Affidavits)
  - § 25-34 Procedure for Short Calendar
  - § 25-38 Judgment Files
  - § 25-57 Affidavit Concerning Children
  - § 25-59 Closed Hearings and Records
  - § 25-60 & § 25-61 Family Division Evaluations and Studies
  - § 25-62 Appointment of Guardian Ad Litem

## **LEGISLATIVE HISTORY:**

- Public Acts 1974, No. 74-169, §12, 17 H.R. Proc., Pt. 6, 1974 Sess., p. 2805 [Conn. Gen. Stat. §46b-61]  
“...expands the jurisdiction of the superior court involving minor children and further states that the section can be used in controversies not only involving a husband and wife but in controversies involving parents of minor children or children if they are no longer married or were never married.”

## **LEGISLATIVE REPORTS:**

- LAWRENCE K. FURBISH, CHILD CUSODY IN MARRIAGE DISSOLUTIONS, Connecticut General Assembly, [Office of Legislative Research](#) Report No. 99-R-0791 (August 5, 1999).

## **FORMS:**

### Official Forms

- VS-56 Acknowledgment of Paternity
- VS-57 Recision of Acknowledgment of Paternity
- JD-CL-12 Appearance
- JD-FM-75 Application for Waiver of Fees
- JD-FM-161 Custody / Visitation Application
- JD-FM-162 Order to Attend Hearing and Notice to the Defendant
- JD-FM-158 Notice of Automatic Orders
- JD-FM-163 Case Management Agreement
- JD-FM-164 Affidavit Concerning Children
- JD-FM-164A Addendum to Affidavit Concerning Children
- JD-FM-165A Case Management Dates
- JD-FM-167 Motion for Notice by Publication or Mail in Family Cases
- JD-FM-168 Order of Notice by Publication or Mail in Family Cases
- JD-FM-175 Certification of Notice in Family Cases (Public Assistance)
- JD-FM-178 Affidavit Concerning Military Service
- JD-FM-160 Answer
- JD-FM-183 Custody/Visitation Agreement
- JD-FM-6 Financial Affidavit
- JD-FM-176 Motion for Orders Before Judgment (Pendente Lite)
- JD-FM-173 Motion for Contempt
- JD-FM-174 Motion for Modification

### *Unofficial Forms*

- Temporary or Pendente Lite Orders  
MARY ELLEN WYNN & ELLEN B. LUBELL, HANDBOOK OF FORMS FOR

THE CONNECTICUT FAMILY LAWYER 106-116 (1991)

- Modification of Automatic Orders  
BARBARA KAHN STARK ET AL., FRIENDLY DIVORCE GUIDEBOOK FOR CONNECTICUT 369 (1998). *Motion for Relief From Automatic Orders*  
REPRESENTING YOURSELF IN A CUSTODY CASE: A HOW TO DO IT YOURSELF BOOKLET, Legal Assistance Resource Center of Connecticut, Sample 7 (2003).
- Exparte Orders  
MARY ELLEN WYNN & ELLEN B. LUBELL, HANDBOOK OF FORMS FOR THE CONNECTICUT FAMILY LAWYER 145-150 (1991)

**CASES:**

- Knock v. Knock, 224 Conn. 776,788, 621 A.2d 267 (1993). “Section 46b-56(b) does not require that the trial court award custody to whomever the child wishes; it requires only that the court take the child’s wishes into consideration.”
- Ridgeway v. Ridgeway, 180 Conn. 533, 541, 429 A.2d 801 (1980). “In this case, the evidence showed that the children were living in a familiar and stable environment with love and attention from their paternal grandparents; that the plaintiff at times had an adverse effect upon the children; and that the plaintiff’s psychological instability was such that it posed a threat to the children’s well-being.”
- Stevens v. Leone, 35 Conn. Supp. 237, 239, 406 A.2d 402 (1979). “It seems obvious ... that it was the intent of the legislature to expand the jurisdiction of the Superior Court regarding custody issues from controversies arising out of a dissolution of marriage to controversies in which a child had been born without benefit of marriage.”
- Rudolewicz v. Rudolewicz, Superior Court, judicial district of Hartford at New Britain, Docket No. 410812 (August 20, 1986), 1 C.S.C.R. 664, 666.  
*20 factors the court should consider when determining the “best interest of the child”*

**WEST KEY  
NUMBERS:**

- *Children Out-of-Wedlock* #20.1– #20.13  
#20.1 Rights of mother  
#20.2 Rights of father
- *Child Custody* #20 – #88 Grounds and factors in general
- *Infants* #19  
#19.2 Matters considered in awarding custody  
#19.3 Determination of right to custody

**ENCYCLOPEDIAS:**

- Robin Cheryl Miller, Annotation, *Child Custody and Visitation Rights Arising From Same-Sex Relationship*, 80 A.L.R. 5<sup>th</sup> 1 (2000).
- Linda A. Francis, Annotation, *Mental Health of Contesting Parent as Factor in Award of Child Custody*, 53 A.L.R. 5<sup>th</sup> 375 (1997).
- Elizabeth Trainor, Annotation, *Initial Award or Denial of Child Custody to Homosexual or Lesbian Parent*, 62 A.L.R. 5<sup>th</sup> 591 (1998).
- Harriet Dinegar Milks, Annotation, *Smoking as Factor in Child Custody and Visitation Cases*, 36 A.L.R. 5<sup>th</sup> 377 (1996).
- Danny R. Veilleux, Annotation, *Age of Parent as Factor in Awarding Custody*, 34 A.L.R. 5<sup>th</sup> 57 (1995).
- Mary E. Taylor, Annotation, *Parent’s Use of Drugs as a Factor in Award of Custody of Children, Visitation Rights, or Termination of Parental Rights*, 20 A.L.R. 5<sup>th</sup> 534 (1994).



- Claudia G. Catalano, Annotation, *Child Custody and Visitation Rights of Person Infected with AIDS*, 86 A.L.R. 4<sup>th</sup> 211 (1991).
- 11 AM. JUR. TRIALS 347 *Child custody litigation* (1966).

**TEXTS &  
TREATISES:**

- LEGAL ASSISTANCE RESOURCE CENTER OF CONNECTICUT, REPRESENTING YOURSELF IN A CUSTODY CASE: A HOW TO DO IT YOURSELF BOOKLET (2003).
- 8 ARNOLD H. RUTKIN ET AL., CONNECTICUT PRACTICE: FAMILY LAW AND PRACTICE WITH FORMS chs. 40-42 (2000).  
Ch. 40 *Jurisdiction to Enter and Enforce Custody Orders*  
Ch. 41 *Pendente Lite Custody & Visitation*  
Ch. 42 *Child Custody and Visitation*
- BARBARA KAHN STARK, FRIENDLY DIVORCE GUIDEBOOK FOR CONNECTICUT ch. 8 (2003).
- LAW PRACTICE HANDBOOKS, FAMILY LAW PRACTICE IN CONNECTICUT ch. 10 (1996). [Jeffrey D. Ginzberg, *Child Custody and Visitation*.]
- CUSTODY DISPUTES: WHAT TO EXPECT FROM THE FAMILY RELATIONS OFFICE. Published by the Legal Assistance Resource Center of Connecticut (2001).
- AMERICAN BAR ASSOCIATION, STANDARDS OF PRACTICE FOR LAWYERS REPRESENTING CHILDREN IN CUSTODY CASES, *reprinted in* 37 FAM. L. Q. 131 (2003). (*approved by the ABA House of Delegates, Aug. 2003*)
- 2 SANDRA MORGAN LITTLE, CHILD CUSTODY & VISITATION LAW AND PRACTICE ch. 10 (2003). *Custody Disputes Between Parents*
- 5 SANDRA MORGAN LITTLE, CHILD CUSTODY & VISITATION LAW AND PRACTICE ch. 30 (2003). *Rights of Putative Fathers to Custody & Visitation*
- MIMI E. LYSTER, CHILD CUSTODY: BUILDING PARENTING AGREEMENTS THAT WORK (3d ed., 1999).

**ARTICLES:**

- Linda D. Elrod, *Raising the Bar for Lawyers Who Represent Children: ABA Standards of Practice for Custody Cases*, 37 FAM. L. Q. 105 (2003).
- Stephen J. Bahr et al., *Trends in Child Custody Awards: Has the Removal of Maternal Preference Made a Difference?* 28 FAM. L. Q. 247 (1994).
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## Table 7 Factors Used in Awarding Custody

Source: Rudolewicz v. Rudolewicz, 1 C.S.C.R. 664, 666 (1986)

Factors	Authorities Cited
“Parenting Skills”	<i>Cappetti v. Cappetta</i> , 196 Conn. 10 (1985)
“Parent’s relationship and psychological or emotional ties with the child”	<i>Cappetti v. Cappetta</i> , 196 Conn. 10 (1985) <i>Seymour v. Seymour</i> , 180 Conn. 705 (1980)
“Parental character with respect to willful disobedience of court orders”	<i>Hall v. Hall</i> , 186 Conn. 118 (1982) <i>Stewart v. Stewart</i> , 177 Conn. 401 (1979) <i>Simons v. Simons</i> , 172 Conn. 341 (1977)
“Willingness to facilitate visitation with the other parent”	<i>Seymour v. Seymour</i> , 180 Conn. 705 (1980)
“Past behavior as it relates to parenting ability”	<i>Seymour v. Seymour</i> , 180 Conn. 705 (1980) <i>Yontef v. Yontef</i> , 185 Conn. 275 (1981)
“Recommendations in the Family Relations report”	<i>Yontef v. Yontef</i> , 185 Conn. 275 (1981)
“Advice of the attorney for the child”	<i>Yontef v. Yontef</i> , 185 Conn. 275 (1981)
“Credibility”	<i>Yontef c. Yontef</i> , 185 Conn. 275 (1981)
“Either parent’s manipulative or coercive behavior through efforts to involve the child in the marital dispute”	<i>Yontef v. Yontef</i> , 185 Conn. 275 (1981)
“The parent’s behavior and its effect on the child”	<i>Yontef v. Yontef</i> , 185 Conn. 275 (1981)
“Continuity and stability of the environment”	<i>Cappetta v. Cappetta</i> , 196 Conn. 10 (1985)
“The flexibility of each parent to best serve the psychological development and growth of the child”	<i>Seymour v. Seymour</i> , 180 Conn. 705 (1980)
“Which parent is more willing and able to address medical and educational problems of the child and to take appropriate steps to have them treated and corrected”	<i>Faria v. Faria</i> , 38 Conn. Sup. 37 (1982)
“A stable and familiar environment with love and attention from the grandparents”	<i>Ridgeway v. Ridgeway</i> , 180 Conn. 533 (1980)
“The psychological instability of one parent posing a threat to the child’s well being”	<i>Ridgeway v. Ridgeway</i> , 180 Conn. 533 (1980)
“The recommendation that one parent immediately commence in-patient treatment”	<i>Ridgeway v. Ridgeway</i> , 180 Conn. 533 (1980)

“Visitation having an adverse effect on the child at the time”	<i>Ridgeway v. Ridgeway</i> , 180 Conn. 533 (1980)
“Remarriage of either parent”	<i>Trunik v. Trunik</i> , 179 Conn. 287 (1979)
“Parental sexual activity”	<i>Trunik v. Trunik</i> , 179 Conn. 287 (1979)
“Consistency in parenting and life style, insofar as these factors might affect the child’s growth, development and well being”	<i>Seymour v. Seymour</i> , 180 Conn. 705 (1980)
“The time each parent would be able to devote to the child on a day to day basis”	<i>Seymour v. Seymour</i> , 180 Conn. 705 (1980)
“Untidy condition of the home, alcoholism, leaving the home unattended, and emotional problems”	<i>Seymour v. Seymour</i> , 180 Conn. 705 (1980)

## Section 2.2

# Third Party Custody Actions

*A Guide to Resources in the Law Library*

- SCOPE:** Bibliographic resources relating to right of nonparents to intervene in child custody actions.
- SEE ALSO:** [Grandparent Rights in Connecticut](#)
- STATUTES:**
- CONN. GEN. STAT. (2003)
- § 46b-56 Superior Court orders re custody and care of minor children...
  - § 46b-56b Presumption re best interest of child to be in custody of parent
  - § 46b-57 Third party intervention re custody of minor children. Preference of child
  - § 46b-94 Notice and opportunity to be heard
  - § 46b-100 Additional parties
- LEGISLATIVE REPORT:**
- Saul Spigel, Grandparents' Custody of Grandchildren, CONNECTICUT GENERAL ASSEMBLY, [OFFICE OF LEGISLATIVE RESEARCH](#), REPORT NO. 2003-R-0596 (SEPTEMBER 22, 2003).
- COURT RULES**
- Connecticut Practice Book (2004 ED.)**
- § 25-23 Motions, Requests, Orders of Notice, and Short Calendar
  - § 25-24 Motions
  - § 25-34 Procedure for Short Calendar
  - § 25-62 Appointment of Guardian Ad Litem
- FORMS:**
- JD-FM-185 Motion for Intervention in Family Matters
  - McDuffee v. McDuffee, 39 Conn. App. 142 (1995), Connecticut Appellate Records & Briefs, June 1995  
*Motion to Intervene, Motion for Temporary Custody & Motion for Custody*
  - Busa v. Bisa, 24 Conn. App. 426 (1991), Connecticut Appellate Records & Briefs, November 1990  
*Motion to be Made Party Defendants*
  - MARY ELLEN WYNN & ELLEN B. LUBELL, HANDBOOK OF FORMS FOR THE CONNECTICUT FAMILY LAWYER (1991).  
Form VI-C-7 *Grandparent's Motion to Intervene* (p. 114)
- CASES:**
- Roth v. Weston, 259 Conn. 202, 789 A.2d 231 (2002). *Petition for visitation by maternal grandmother and maternal aunt pursuant to Conn. Gen. Stat. § 46b-59.*

“Building on a long line of cases acknowledging the fundamental right of parents to raise their children as they see fit, *Troxel* teaches that courts must presume that ‘fit parents act in the best interest of their children’ and that ‘so long as a parent adequately cares for his or her children (i.e., is fit) there will normally be no reason for the State to inject itself into the private realm of the family to further question the ability of that parent to make the best decisions concerning the rearing of that parent’s children.’” (p. 216)

- *In Re Felicia B.*, 56 Conn. App. 525, 527, 743 A.2d 1160 (2000), *cert. denied*, 252 Conn. 952 (2000).

*Grandparent’s motion for custody and visitation denied*

“The trial court concluded specifically that ‘[the paternal relatives] have not grasped the very crux of the matter; that they cannot safeguard and provide care in the children’s best interest while still clinging to the hope that their son did not sexually abuse their grandchildren.’” (p. 527)

- *Busa v. Busa*, 24 Conn. App. 426, 428, 589 A.2d 370 (1991). “... §46b-56b ... creates a presumption ... that it is in the best interest of the child to be in the custody of the parent. This presumption can be rebutted only by showing that it would be detrimental to the child to permit the parent to have custody.”
- *Cappetta v. Cappetta*, 196 Conn. 10, 14, 490 A.2d 996 (1985). “The overarching concern of the search for the best interests of the child may, in some cases, permit a court to award custody to a third person who is not a party, even without formal intervention, if that person’s potential custodial status was properly before the court.”
- *Foster v. Foster*, No. FA01-0558204S (Conn. Super. Ct., New London, Jan. 14, 2003), 2003 Conn. Super. Lexis 139. “The court finds that the constitutional protection afforded by *Roth v. Weston* to a parent-child relationship applies equally to custody actions under General Statutes §§ 46b-56 and 46b-57... The court thus agrees with the plaintiff regarding the interrelationship of the statutory scheme of these three statutes and would apply the *Roth* standard under General Statutes §§ 46b-56 and 46b-57 whether a non-parent seeks visitation or custody.”

**WEST KEY  
NUMBERS:**

- *Child Custody* #270 – #289
- *Infants* #19.3 Determination of right to custody

**TEXTS &  
TREATISES:**

- 8 ARNOLD H. RUTKIN ET AL., *CONNECTICUT PRACTICE: FAMILY LAW AND PRACTICE WITH FORMS* § 42.11(2000).
- 2 SANDRA MORGAN LITTLE, *CHILD CUSTODY & VISITATION LAW AND PRACTICE* ch. 11 (2003).
- ANN M. HARALAMBIE, *HANDLING CHILD CUSTODY, ABUSE AND ADOPTION CASES* Ch. 10 (1993).

**ARTICLES:**

- Laura W. Morgan, *Stepparents’ and Cohabitants’ Rights to Custody and Visitation*, 1999 WILEY FAMILY LAW UPDATE 249 (1999).

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## Section 2.3

# Temporary or Pendente Lite Custody Orders

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*A Guide to Resources in the Law Library*

- SCOPE:** Bibliographic resources relating to temporary custody orders issued while a custody action is pending.
- DEFINITION:**
- “**Pendente lite** orders, by their very definition, are orders that continue to be in force ‘during the pendency of a suit, action, or litigation.’ Ballentine’s Law Dictionary (3d ed., 1969.” Febbrioriello v. Febbrioriello, 21 Conn. App. 200, 206, 572 A.2d 1032 (1990).
  - “**Pendente lite** orders necessarily cease to exist once a final judgment in the dispute has been rendered because their purpose is extinguished at that time.” Connolly v. Connolly, 191 Conn. 468, 480, 464 A.2d 837 (1983).
- STATUTES:**
- CONN. GEN. STAT. (2003)
- § 46b-56 Superior Court orders re custody and care of minor children ...
  - § 46b-64 Orders of court prior to return day of complaint
- COURT RULES**
- CONNECTICUT PRACTICE BOOK (2004 ed.)
- § 25-23 Motions, Requests, Orders of Notice, and Short Calendar
  - § 25-24 Motions
  - § 25-26 Modification of Custody, Alimony or Support
- FORMS:**
- JD-FM-176 Motion for Orders Before Judgment (Pendente Lite)
  - MARY ELLEN WYNN & ELLEN B. LUBELL, HANDBOOK OF FORMS FOR THE CONNECTICUT FAMILY LAWYER 106-116 (1991).
    - Form VI-C-2 “Motion for Custody and Support Pendente Lite” (p. 108)
    - Form VI-C-4 “Motion for Temporary Joint Custody and Determination of Joint Custodial Rights” (p. 110)
    - Form VI-C-5 “Motion for Temporary Change of Custody Pending Final Determination of Motion to Modify Custody” (p. 111)
  - *For guidance on completing the Pendente Lite form see*, BARBARA KAHN STARK, FRIENDLY DIVORCE GUIDEBOOK FOR CONNECTICUT 125-127 (2d ed., 2003).
- CASES:**
- Madigan v. Madigan, 224 Conn. 749, 620 A.2d 1276 (1993). “...we conclude that temporary custody orders are immediately appealable because an immediate appeal is the only reasonable method of ensuring that the important

rights surrounding the parent-child relationship are adequately protected.” (p. 757)

- Yontef v. Yontef, 185 Conn. 275, 440 A.2d 899 (1985). “A trial court rendering a judgment in a disputed custody case should therefore consider entering protective orders sua sponte to ensure an orderly transition that protects the primary interests of the children ...” (p. 291-292)  
“If an appeal appears likely, the court should enter whatever interim postjudgment orders it deems most appropriate ... taking into consideration the needs of the minor children ... as well as the need of the parent who appeals for a fair opportunity to present his or her case.” (p. 293-294)
- Hall v. Hall, 186 Conn. 118, 123, 439 A.2d 447 (1982). “Although during the pendency of the dissolution action the parties and the child have an interest in undisrupted custody, the trial court typically awards custody pendente lite without having all the relevant circumstances before it... Until the entry of the final decree the court has discretion to modify custody according to the best interest of the child without first finding a material change of circumstances since the previous award.”
- Faria v. Faria, 38 Conn. Supp. 37, 456 A.2d 1205 (1982) Referencing the “affirmative duty imposed upon the court in Yontef in all custody cases”, the court terminated the automatic stay for appeal provided by Practice Book §3065. (p. 53)

#### **TEXTS & TREATISES:**

- 8 ARNOLD H. RUTKIN ET AL., CONNECTICUT PRACTICE: FAMILY LAW AND PRACTICE WITH FORMS (2000).  
Chap. 41 Pendente Lite Custody and Visitation Orders  
§ 41.2 Automatic Orders Affecting Temporary Custody  
§ 41.3 Determining Necessity of Motion for Temporary Custody  
§ 41.4 Significance of Temporary Custody Determinations  
§ 41.5 Modification and Enforcement of Temporary Orders  
§ 41.6 Appealability of Temporary Orders
- BARBARA KAHN STARK, FRIENDLY DIVORCE GUIDEBOOK FOR CONNECTICUT ch. 8 (2d ed., 2003).
- LAW PRACTICE HANDBOOKS, INC., FAMILY LAW PRACTICE IN CONNECTICUT 10-17 (1996).

#### **ENCYCLOPEDIAS:**

- Kurtis A. Kemper, Annotation, *Appealability of Interlocutory or Pendente Lite Order for Temporary Child Custody*, 82 A.L.R. 5<sup>th</sup> 389 (2000).

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## Section 2.4

# Joint Custody

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*A Guide to Resources in the Law Library*

- SCOPE:** Bibliographic resources relating joint custody and the criteria for granting joint custody awards.
- DEFINITION:** “**Joint custody**” means an order awarding legal custody of the minor child to both parents, providing for joint decision-making by the parents and providing that physical custody shall be shared by the parents in such a way as to assure the child of continuing contact with both parents.” (CONN. GEN. STAT. § 46b-56a(a))
- STATUTES:** CONN. GEN. STAT. (2003)
- § 46b-56 Superior Court orders re custody and care of minor children in actions for dissolution of marriage, legal separation and annulment...
  - § 46b-56a Joint custody. Definition. Presumption. Conciliation.
- LEGISLATIVE REPORTS:**
- SAUL SPIGEL, PRESUMPTION FOR JOINT CUSTODY IN DIVORCE, Connecticut General Assembly, Office of Legislative Research Report No. 2000-R-0759 (July 26, 2000).
- FORMS:**
- MARY ELLEN WYNN & ELLEN B. LUBELL, HANDBOOK OF FORMS FOR THE CONNECTICUT FAMILY LAWYER 106-116 (1991)  
Form VI-C-4 “Motion for Temporary Joint Custody and Determination of Joint Custodial Rights” (p. 110)
  - 8A AM. JUR. PLEADING & PRACTICE FORMS *Divorce and Separation* (1996)  
Form 8 “Stipulation Regarding Joint Custody of Children”  
Forms 233 & 234 “Husband and Wife Seek Joint Custody...”  
Forms 533 & 534 “Judgment or Decree - Provision - Joint Custody”  
Form 864 “Petition or Application - By Husband - To Terminate Joint Custody of Child”
  - 1 ANN M. HARALAMBIE, HANDLING CHILD CUSTODY, ABUSE AND ADOPTION CASES §4.23 (1993).
- CASES:**
- Tabackman v. Tabackman, 25 Conn. App. 366, 593 A.2d 526 (1991).  
“...because the [joint custody] award was made without agreement of the parties, pursuant to General Statute §46b-56a, or after motion by one of the parties, it was improperly granted.” (p. 369)
  - Timm v. Timm, 195 Conn. 202, 487 A.2d 191 (1985). “The trial court ... could reasonably have concluded ... that there really was no meeting of the minds and thus that a joint custody award was not in the best interests of the children.” (p. 208)
  - Emerick v. Emerick, 5 Conn. App. 649, 502 A.2d 933 (1985). “The statute [§46b-56a], read as a whole, reflects a legislative belief that joint custody cannot work unless both parties are united in its purpose. Therefore, joint



custody cannot be an alternative to a sole custody award where neither party seeks it and where no opportunity is given to the recalcitrant parent to embrace the concept.” (p. 658)

- Wasson v. Wasson, Docket No. FA98-0165911S (Stamford Super. Ct., April 23, 2003), 2003 Conn. Super. Lexis 1230. ““The difference between a sole custodian and a joint legal custodian is that the sole custodian has the ultimate authority to make all decisions regarding a child’s welfare, such as education, religious instruction and medical care whereas a joint legal custodian shares the responsibility for those decisions.””
- Christolini v. Christolini, Docket No. FA98-0145598 (Waterbury Super. Ct., April 12, 2000), 2000 Conn. Super. Lexis 1127. “Joint custody requires positive communication between parents; an ability not only to speak but to listen to the other parent and to consider the position of the other parent in terms of the needs of the children.”
- Salvatore v. Dunn, 5 Conn. L. Rptr. 759, 7 C.S.C.R. 133 (Hartford Super. Ct. Dec. 20, 1991), 1991 WL 281506, 1991 Conn. Super. Lexis 3154.  
*Joint legal custody awarded to unmarried, minor parents.*

**WEST KEY  
NUMBERS:**

- *Child Custody* #120 –#155
- *Children Out-of-Wedlock* #20.9

**TEXTS &  
TREATISES:**

- 8 ARNOLD H. RUTKIN ET AL., CONNECTICUT PRACTICE: FAMILY LAW AND PRACTICE WITH FORMS (2000).  
§ 42.7 Joint Custody – Generally  
§ 42.8 Joint Custody - Sharing Physical Access  
§ 42.9 Joint Custody - Parental Agreement Requirements
- BARBARA KAHN STARK, FRIENDLY DIVORCE GUIDEBOOK FOR CONNECTICUT 183-191 (2d ed., 2003).
- LAW PRACTICE HANDBOOKS, INC., FAMILY LAW PRACTICE IN CONNECTICUT 10-22 (1996).
- 2 SANDRA MORGAN LITTLE, CHILD CUSTODY & VISITATION LAW AND PRACTICE Ch. 13 (2004).
- 1 ANN M. HARALAMBIE, HANDLING CHILD CUSTODY, ABUSE AND ADOPTION CASES (1993).  
§ 4.20 Joint Custody Generally  
§ 4.21 Joint Legal Custody  
§ 4.22 Shared Physical Custody  
§ 4.23 Drafting Joint Custody Agreements
- Robert E. Fay, *Joint Custody of Infants and Toddlers: Theoretical and Practical Aspects*, in 1995 WILEY FAMILY LAW UPDATE 251 (1995).

**ENCYCLOPEDIAS:**

- Vitauts M. Gulbis, Annotation, *Propriety of Awarding Joint Custody of Children*, 17 A.L.R. 4<sup>th</sup> 1013 (1982).

**LAW REVIEWS:**

- Joseph L. Steinberg, *Joint Custody: Is Parental Approval Required? An Analysis of Emerick v. Emerick*, 4 CONN. FAM. L. J. 51 (1986).
- Louis Parley, *Joint Custody: A Lawyers Perspective*, 53 CONN. B. J. 310 (1979).
- James W. Bozzomo, *Joint Legal Custody: a parent’s constitutional right in a reorganized family*. 31 HOFSTRA L. REV. 547 (2002).
- William C. Smith, *Dads Want Their Day: Fathers Charge Legal Bias Toward Moms Hamstrings Them as Full-Time Parents*. 89 ABA J., Feb 2003, at 38.
- Gerald Hardcastle, *Joint Custody: A Family Court Judge’s Perspective*, 32

- Fam. L. Q. 201 (Spring 1998).
- Thomas Wilson Lowe III, *Evaluating Parental Potential for Joint Custody (with Form)*, 36 PRAC. LAW., Mar. 1990, at 71.

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# Section 2.5

## Modification of Child Custody

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*A Guide to Resources in the Law Library*

- SCOPE:** Bibliographic resources relating to the authority, grounds and procedures for modification of court orders relating to custody of minor children.
- DEFINITION:** “**Modification**” means a child custody determination that changes, replaces, supercedes or is otherwise made after a previous determination concerning the same child, whether or not it is made by the court that made the prior custody determination.” (CONN. GEN. STAT. § 46b-115a(11)).
- STATUTES:** CONN. GEN. STAT. (2003)
- § 46b-55 Attorney General as party
  - § 46b-56 Superior court orders re custody and care of minor children in actions for dissolution of marriage, legal separation and annulment
  - § 46b-61 Orders re children where parents live separately
  - § 46b-71 Filing of foreign matrimonial judgment; enforcement in this state (b) “...A foreign matrimonial judgment so filed ... is subject to the same procedures for modifying ... as a judgment of a court of this state; provided ... the substantive law of the foreign state shall be controlling.
  - § 46b-115m Modification of custody determination of another state.
  - § 46b-115w Registration of child custody determination.
- COURT RULES** CONNECTICUT PRACTICE BOOK (2004 ed.)
- § 25-26 Modification of Custody, Alimony or Support
  - § 25-30 Statements to be Filed
- FORMS:**
- [JD-FM-174 Motion for Modification](#)
  - 8 ARNOLD H. RUTKIN ET AL., CONNECTICUT PRACTICE: FAMILY LAW AND PRACTICE WITH FORMS 592 (2000).
    - § 44.3 Motion for Modification of Custody/Visitation – Form
    - § 44.9 Motion for Temporary Change of Custody Pending Final Determination of Motion to Modify Custody
  - MARY ELLEN WYNN & ELLEN B. LUBELL, HANDBOOK OF FORMS FOR THE CONNECTICUT FAMILY LAWYER 106 (1991)
    - Form VI-C-5 “Motion for Temporary Change of Custody Pending Final Determination of Motion to Modify Custody” (p. 111)
- CASES:**
- Janik v. Janik, 61 Conn. App. 175, 763 A.2d 65 (2000), *cert. denied*, 255 Conn. 940 (2001). *Modification of custody from joint legal custody to sole*

*legal custody*

“We conclude that the evidence was sufficient for the court to find that the defendant did not provide a supportive and stable environment for the child and, therefore, that it was in the best interest of the child for the plaintiff to have sole custody” (p.184).

- Kelly v. Kelly, 54 Conn. App. 50,56, 732 A.2d 808 (1999). “Because the establishment of changed circumstances is a condition precedent to a party’s relief, it is pertinent for the trial court to inquire as to what, if any, new circumstances warrants a modification of the existing order.”
- Borkowski v. Borkowski, 228 Conn. 729, 737-738, 638 A.2d 1060 (1994). “To obtain a modification, the moving party must demonstrate that circumstances have changed since the last court order such that it would be unjust or inequitable to hold either party to it. ...[I]t is pertinent for the trial court to inquire as to what, if any, new circumstance warrants a modification of the existing order... The power of the trial court to modify the existing order does not, however, include the power to retry issues already decided... Therefore, although the trial court may consider the same criteria used to determine the initial award ‘without limitation’... its inquiry is necessarily confined to a comparison between the current conditions and the last court order.”
- Cookson v. Cookson, 201 Conn. 229, 514 A.2d 323 (1986). The standard of proof applicable to modification of custody proceedings is the “fair preponderance of the evidence standard”.
- Evans v. Santoro, 6 Conn. App. 707, 710, 507 A.2d 1007 (1986). “...the burden of proving that a change of custody would be in the child’s best interest rests upon the party seeking the change.”
- Hall v. Hall, 186 Conn. 118,122, 439 A.2d 447 (1982). Modification of a custody order must be “based upon either a material change of circumstances which alters the court’s finding of the best interests of the child ... or a finding that the custody order ... was not based upon the best interests of the child.”
- Fish v. Fish, No. FA 00 0339326 S (Conn. Super. Ct., Middletown, June 3, 2003), 2003 Conn. Super. Lexis 1669. *Quoting both Borkowski and Kelly*.
- Rudolewicz v. Rudolewicz, Superior Court, judicial district of New Haven, Docket No. 410812 (August 20, 1986), 1 C.S.C.R. 664. “... the plaintiff has proved by the preponderance of the evidence that at the time of the entry of the decree of dissolution the court had focused its attention primarily on the termination of the marriage relationship and not on the best interests of the child.”

**WEST KEY  
NUMBERS:**

- *Children Out-of-Wedlock* #20.10
- *Child Custody* #550 – #662  
#552-579 Grounds and factors  
#600-662 Proceedings
- *Infants* #19.3(6,7)

**TEXTS &  
TREATISES:**

- 8 ARNOLD H. RUTKIN ET AL., CONNECTICUT PRACTICE: FAMILY LAW AND PRACTICE WITH FORMS 588 (2000).
- [HOW TO MODIFY CHILD CUSTODY ORDERS](#), Legal Assistance Resource Center of Connecticut (2001).
- FAMILY LAW PRACTICE IN CONNECTICUT, Law Practice Handbooks, Inc. 10-39 (1996).  
Chap. 10 “Child Custody and Visitation”, by Jeffrey D. Ginzberg.

- 4 SANDRA MORGAN LITTLE, CHILD CUSTODY & VISITATION LAW AND PRACTICE 25-1 (2004).

**ENCYCLOPEDIAS:**

- Jay M. Zitter, Annotation, *Custodial Parent's Relocation as Grounds for Change of Custody*, 70 A.L.R. 5<sup>th</sup> 377 (1999).
- David Carl Minneman, Annotation, *Home State Jurisdiction of Court to Modify Foreign Child Custody Decree Under §§ 3(a)(1) and 14(a)(2) of Uniform Child Custody Jurisdiction Act (UCCJA) and Parental Kidnapping Prevention Act (PKPA)*, 28 U.S.C.A. §§ 1738A(c)(A) and 1738A(f)(1), 72 A.L.R. 5<sup>th</sup> 249 (1999).
- Debra E. Wax, Annotation, D. Wax, *Interference by Custodian of Child with Noncustodial Parent's Visitation Rights as Grounds for Change of Custody*, 28 A.L.R. 4<sup>th</sup> 99 (1984).

**ARTICLES:**

- Linda D. Elrod, *When Should Custody be Modified: flexibility versus stability*, 26 FAMILY ADVOCATE, Spring 2004, at 40.

**COMPILER:**

Barbara J. Bradley, Law Librarian, Connecticut Judicial Department, Law Library at Norwich, One Courthouse Square, Norwich, CT 06360.  
(860) 887-2398. EMAIL: [barbara.bradley@jud.state.ct.us](mailto:barbara.bradley@jud.state.ct.us).

## Section 2.6

# Habeas Corpus Proceedings in Child Custody Matters

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*A Guide to Resources in the Law Library*

### **SCOPE:**

Bibliographic resources relating to the applicability of a writ of habeas corpus in child custody matters, form preparation and procedure in habeas corpus custody proceedings.

### **DEFINITION:**

- “A habeas corpus petition concerning a minor child’s custody is an equitable proceeding in which the trial court is called upon to decide, in the exercise of its sound discretion, the custodial placement which will be best for the child.”
- “In order to invoke the aid of a habeas corpus writ to enforce a right to physical custody of a minor, the applicant for the writ must show a prima facie legal right to custody.” *Evans v. Santoro*, 6 Conn. App. 707, 709, 507 A.2d 1007 (1986).

### **STATUTES:**

CONN. GEN. STAT. (2003)

- § 45a-606 Father and mother joint guardians
- § 46b-1(8), (9) Family relations matters defined
- § 52-466 Application for writ of habeas corpus. Service. Return.
- § 52-467 Punishment for refusal to obey writ or accept copy.
- § 52-493 Order in the nature of prerogative writs

### **COURT RULES**

CONNECTICUT PRACTICE BOOK (2004 ed.)

- § 25-40 Habeas Corpus in Family; The Petition
- § 25-41 --Preliminary Consideration
- § 25-42 --Dismissal
- § 25-43 --The Return
- § 25-44 --Reply to the Return
- § 25-45 --Schedule for filing Pleadings
- § 25-46 --Summary Judgment as to Writ of Habeas Corpus
- § 25-47 --Discovery

### **FORMS:**

- 8 ARNOLD H. RUTKIN ET AL., CONNECTICUT PRACTICE: FAMILY LAW AND PRACTICE WITH FORMS 577 (2000).  
§ 43.9 “Application for Writ of Habeas Corpus”
- MARY ELLEN WYNN & ELLEN B. LUBELL, HANDBOOK OF FORMS FOR THE CONNECTICUT FAMILY LAWYER 175 (1991)  
Forms X-A-1a “Application for Writ of Habeas Corpus Concerning Custody/Visitation of Minor Child(ren)”
- 1A DOUGLAS B. WRIGHT & JOHN H. YEOMANS, CONNECTICUT LEGAL

FORMS §1101.8 (1983).

- 1 SANDRA MORGAN LITTLE, CHILD CUSTODY & VISITATION LAW AND PRACTICE § 7.10 (2004).
  - § 6.08[7] “Petition for writ of habeas corpus”
  - § 6.08[8] “Return to petition for writ of habeas corpus”
- 19 AM. JUR. PLEADING & PRACTICE FORMS *Parent & Child* §§ 29-34 (1997).
  - §29 “Petition or application—For writ of habeas corpus—By parent—General form”
  - §30 “Petition or application—For writ of habeas corpus—By parent against grandparents—For custody of chld—After death of custodial parent”
  - §31 “Petition or application—For writ of habeas corpus—Child forcibly taken by parent to another state”

#### CASES:

- Lehman v. Lycoming County Children’s Services Agency, 458 U.S. 502, 102 S. Ct. 3231 (1982). The Supreme Court held that the federal habeas corpus statute “does not confer jurisdiction on federal courts to consider collateral challenges to state-court judgments involuntarily terminating parental rights.” (102 S. Ct. 3231, 3232 *Syllabus*)
- Terese B. v. Commissioner of Children & Families, 68 Conn. App. 223, 230, 789 A.2d 1114 (2002). “In light of our Supreme Court holdings in *Nye* and *Hunte*, we conclude that in the present case, the plaintiff cannot prevail on her assertion that she, as a foster parent, has a liberty interest under our federal constitution in matters of family life and the integrity of the family unit. Because the plaintiff has failed to demonstrate a specific, personal and legal interest, she has failed to establish the first part of the classical aggrievement test.”
- In Re Jonathan M., 255 Conn. 208, 223, 764 A.2d 739 (2001). “The primary issue in this appeal is whether the habeas petition may be employed as a means of testing the merits of the termination judgment, and not solely as a means of bringing challenges to custody and visitation orders. Although the petitioner’s parental rights have been terminated by a presumptively valid judgment ... to foreclose, on jurisdictional grounds, his ability to seek custody and assert subsequent challenges to the termination judgment, whether through a petition for a writ of habeas corpus or other means, would require a circular course of reasoning in which we are unprepared to indulge.”
- In re Kristy L. v. Ragalia, 47 Conn. Sup. 273, 282, 1999 WL 33445268 (2001). “The threshold question remains: whether the mother and stepfather of the biological father whose rights have been terminated have standing to institute a habeas action seeking determination of the son’s biological child. The court neither finds any statutory authority for the granting of standing, nor can it find any basis for such a confirmation by case law.”
- Weidenbacher v. Duclos, 234 Conn. 51, 74, 661 A.2d 988 (1995). “... we hold that the mere fact that a child was born while the mother was married is not a per se bar that prevents a man other than her husband from establishing standing to bring an action for a writ of habeas corpus for custody of or visitation with a minor child.”
- Evans v. Santoro, 6 Conn. App. 707, 507 A.2d 1007 (1986). Mother’s application for writ of habeas corpus seeking to have her daughter removed from the custody of child’s paternal grandparents; custody awarded to the mother.
- Baram v. Schwartz, 151 Conn. 315, 318, 197 A.2d 334 (1964). “The writ of

habeas corpus has long been recognized as a proper means of determining the right to the custody of a minor child, and the welfare of the child is the paramount consideration, whether the controversy is between the parents or between a parent and a stranger.”

- Nichols v. Giles, 2 Root 461 (1796). Habeas corpus motion brought by father to have his child removed from the custody of child’s mother and grandfather; petition denied.
- Axelrod v. Avery, 13 Conn. L. Rptr. 124 (New London Super. Ct. Dec. 1, 1994), 1994 WL 684736, 1994 Conn. Super. Lexis 3058. Grandparents found to “have standing to bring this petition for a writ of habeas corpus”.

**WEST KEY  
NUMBERS:**

- *Habeas Corpus* #532 (1,2)

**TEXTS &  
TREATISES:**

- 8 ARNOLD H. RUTKIN ET AL., CONNECTICUT PRACTICE: FAMILY LAW AND PRACTICE WITH FORMS 576 (2000).
- 1 SANDRA MORGAN LITTLE, CHILD CUSTODY & VISITATION LAW AND PRACTICE § 6.06 (2004).

**ENCYCLOPEDIAS:**

- 39 AM. JUR. 2D *Habeas Corpus* § 156 (1999)
- G. Lewter, Annotation, *Court’s Power in Habeas Corpus Proceedings Relating to Custody of Child to Adjudicate Questions as to Child’s Support*, 17 A.L.R. 3d 764 (1968).
- J. F. Riley, Annotation, *Child Custody Provisions of Divorce or Separation Decree as Subject to Modification on Habeas Corpus*, 4 A.L.R.3d 1277 (1965).
- K. A. Kemper Annotation, *Availability of Federal Habeas Corpus Relief, Under 28 USCS 2241 and 2254, in Child Custody Cases*, 49 A.L.R. Fed. 674 (1980).
- D. C. Smith, *Cause of Action Against Noncustodial Parent for Interference with Custody Rights to Child*, 5 C.O.A. 799 (1984).

**LAW REVIEWS:**

- Paul J. Buser, *Habeas Corpus Litigation in Child Custody Matters: An Historical Mine Field*, 2 JOURNAL OF THE AMERICAN ACADEMY OF MATRIMONIAL LAWYERS, Winter 1993, at 1.  
(available at the Norwich Law Library)
- 

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## Section 2.7

# Writ of Ne Exeat in Child Custody Actions

*A Guide to Resources in the Law Library*

### **SCOPE:**

Bibliographic resources relating to the writ of ne exeat especially in child custody cases in Connecticut.

### **DEFINITION:**

- “In essence, a writ of ne exeat is an order directed to the sheriff, commanding him to commit a party to custody until he gives security in the amount set by the court to guarantee his appearance in court... The writ of ne exeat is executed in all respects like an ordinary capias, and the bond is taken in the same way. The defendant, if arrested under the writ, may give bond at any time and be discharged. *Beveridge v. Beveridge*, 7 Conn. App. 11, 16, 507 A.2d 502 (1986).
- “The superior court for any judicial district, and, when such court is not in session, any judge thereof, may grant and enforce writs of ne exeat, according to the course of the common law.” CONN. GEN. STATS. § 52-489 (2003).
- **Service:** “All notices of rules and writs issued under the provisions of this chapter shall be directed to a proper officer and served by leaving a true and attested copy with the defendant at such time as the court or judge directs; and such court or judge may prescribe a reasonable time for the appearance of the parties.” CONN. GEN. STATS. § 52-494 (2003).

### **STATUTES:**

CONN. GEN. STAT. (2003).

Chapter 870. Judicial Branch

- § 51-15. Rules of procedure in certain civil actions

Chapter 898. Pleading

- § 52-122. Procedure in certain actions not changed

Chapter 918. Mandamus, Ne Exeat, Prohibition and Quo Warranto

- § 52-489. Issue of writ of ne exeat
- § 52-493 Order in the nature of prerogative writs
- § 52-494 Notice of rules and writs

### **FORMS:**

- 2 CONNECTICUT PRACTICE BOOK (1978).  
Form 604.28 Writ of Ne Exeat
- MARY ELLEN WYNN & ELLEN B. LUBELL, HANDBOOK OF FORMS FOR THE CONNECTICUT FAMILY LAWYER 184-187 (1991).
- 18A AMJUR PL. & PRACT. FORMS *Ne Exeat*  
§ 7. Petition or application—For writ of ne exeat—General Form  
§ 9. Motion— for writ of ne exeat

- § 10. Affidavit —In support of application for writ of ne exeat
- § 11. Affidavit —In support of application for writ of ne exeat—Another form
- § 12. Bond—To obtain writ of ne exeat
- § 17. Order—Granting writ of ne exeat
- § 18. Writ of ne exeat
- § 20. Return of ne exeat—By sheriff—Reciting arrest and giving of security
- § 21. Return of ne exeat—By sheriff—Reciting arrest and imprisonment

#### **CHECKLISTS:**

- 18A AMJUR PL. & PRACT. FORMS *Ne Exeat* (1997).  
§ 6. Checklist—Matters that should be alleged in petition, application, or motion for a writ of ne exeat

#### **CASES:**

- Hauge v. Mapley, No. FA01-01871 34 S (Conn. Super. Ct., Stamford J.D., Jul. 17, 2003), 2003 WL 21805487. “The court finds that the father has the assets and funds to pay the arrearage. The court has signed a Writ of Ne Exeat that prohibits the father from leaving the state until he has paid his current support arrearage and posts a performance bond for the payment of future support.”
- Rhode Island Hospital Trust Nat. Bank v. Trust, 25 Conn. App. 28, 31, 592 A.2d 417 (1991). “There are other procedures in our law that afford a party a remedy prior to the rendering of of judgment (e.g., writ of Ne Exeat, temporary mandamus, and appointment of receiver). Like temporary injunctions, however, their temporal relation to the judgment does not qualify them for immediate appeal ability under the PJR appeal statute.”
- Beveridge v. Beveridge, 7 Conn. App. 11, 507 A.2d 502 (1986).
- Freeman v. Freeman, 17 Conn. Supp. 125 (1950).
- Lyon v. Lyon, 21 Conn. 199 (1851). “The counsel for the plaintiff then moved the court to assign a time for the defendant to appear, and shew cause why such process should not issue. The court assigned a day about a fortnight thereafter. Before the day arrived, however, the plaintiff’s counsel, fearing that the defendant would leave the state, and thus evade process, drew up an application to the court, stating, that the defendant had, notwithstanding the decision of this court, refused to pay the 5,000 dollars alimony, and had spoken with contempt of the court, and its order; had expressed a determination to disobey it; and had used language importing a purpose to go beyond the jurisdiction ; to which statement the plaintiff made affidavit. This being presented to the court, the plaintiff prayed, that a writ of *ne exeat* should be issued forthwith; claiming, that the defendant might, and probably would, if he knew of the application, immediately place himself beyond the reach of process.”

#### **DIGESTS:**

- WEST’S KEY NUMBER: *Ne Exeat*
  - # 1. Nature and purpose of remedy
  - # 2. Constitutional and statutory provisions
  - # 3. Grounds
  - # 4. Jurisdiction to issue
  - # 5. Proceedings to procure
  - # 6. \_\_\_\_\_ In general
  - # 7. \_\_\_\_\_ Affidavits
  - # 8. \_\_\_\_\_ Bond
  - # 9. Issuance, form and requisities

- # 10. Service, and custody of prisoner
- # 11. Equitable bail
- # 12. Vacating or discharge
- # 13. Return
- # 14. Liabilities on bonds
- # 15. Wrongful arrest or restraint

- DIGEST OF DECISIONS CONNECTICUT: *Ne Exeat*

**TEXTS &  
TREATISES:**

- 1 Edward L. Stephenson, CONNECTICUT CIVIL PROCEDURE § 55 (2d ed. 1988).
- MARY ELLEN WYNN & ELLEN B. LUBELL, HANDBOOK OF FORMS FOR THE CONNECTICUT FAMILY LAWYER 175 (1991).
- 3 KAYE, EFFRON & KAYE, CONNECTICUT PRACTICE BOOK ANNOTATED Form 604.28 (1996).

**ENCYCLOPEDIAS:**

- 57 AM. JUR. 2D *Ne Exeat* (2001).
  - I. In general
  - II. Availability
  - III. Proceedings for issuance and execution of writ
  - IV. Bond or undertaking of defendant
  - V. Discharge of writ
- 65 C.J.S. *Ne Exeat* (2000).
  - I. Nature and availability of the writ
  - II. Issuance
  - III. Service and enforcement
  - IV. Discharge
- Debra T. Landis, Annotation, *Civil Liability Of Attorney For Abuse Of Process*, 97 ALR3d 688 (1980).
- Milton Roberts, Annotation, *Principal's Liability For Punitive Damages Because Of False Arrest Or Imprisonment, Or Malicious Prosecution, By Agent Or Employee*, 93 ALR3d 826 (1979).

**COMPILER:**

Lawrence Cheeseman, Connecticut Judicial Branch, Law Library at Middletown, One Court Street, Middletown, CT 06457. (860) 343-6560. [EMAIL](#)

**Table 8 History of the Writ of Ne Exeat**

## **History of the Writ of Ne Exeat**

“In order to assist in understanding the implications of the issuance of a writ of ne exeat and of the obligations of sureties on a bond issued pursuant thereto, we look to the history of this ancient writ. Antedating this writ, in early common law, there existed a writ de securitatem invenianda which was utilized to prevent members of the clergy in England from departing the realm to visit the Papal See. *National Automobile & Casualty Ins. Co. v. Queck*, 1 Ariz. App. 595, 599, 405 P.2d 905 (1965). Thus, it was limited to restricting the movement only of ecclesiastics. Between the twelfth and fourteenth centuries, the writ evolved into a high prerogative writ, available to and utilized by the king to prevent subjects and foreigners, alike, from leaving the kingdom, which became known as a writ of ne exeat regno. It was predicated on the duty of the subject to defend the king and his realm and was primarily used for political purposes or to secure the safety of the state and the benefit of the realm. *Id.* How this royal prerogative writ came to private use is uncertain but between the sixteenth and seventeenth centuries the practice had developed of using a writ of ne exeat to enforce a private right. *Id.* Such use of the writ continues to the present day. The writ came to this country with the body of English common law that we adopted as our own. Some state courts base their authority to issue the writ on their inherent power to apply measures available at common law. Other states have provided for the writ by statute. In many states the writ has been abolished by statute. See 57 Am.Jur. 2d, Ne Exeat 1 et seq.; 65 C.J.S., Ne Exeat 1 et seq.” *Beveridge v. Beveridge*, 7 Conn. App. 11, 15-16, 507 A.2d 502 (1986)

Figure 1 Writ of Ne Exeat

## Writ of Ne Exeat

To the Superior Court in and for the judicial district of  
at \_\_\_\_\_ now in session:  
(or if not in session)

To the Hon. \_\_\_\_\_, a Judge of the Superior Court,

The application of *(name and residence)* respectfully represents:

1. On *(date)* she obtained a decree for the dissolution of her marriage to *(name and residence)*, the defendant herein, in the *(name and location of court)*.
2. The decree ordered the defendant to pay the plaintiff \$ \_\_\_\_\_ lump sum alimony.
3. This alimony has not been paid.
4. The defendant has declared that he will never pay a cent of the alimony, and has threatened to leave the state of Connecticut permanently.
5. The defendant has no known visible property which can be attached or levied upon, but has abundant means for the payment of the alimony concealed in his possession or control.
6. The plaintiff is making a motion in the court where the decree was entered requesting that the defendant be found in contempt for failure to pay the alimony, and the plaintiff believes the defendant will leave this state before a hearing can be held on the motion.
7. The plaintiff annexes hereto a bond with surety that she pay all proper costs and damages sustained by the defendant if she shall be found wrongfully to have sued out the writ applied for.

The plaintiff asks that a writ of ne exeat may forthwith be issued to prevent the defendant from leaving this state until he has paid the alimony.

Dated at *(place and date)*

Name of Plaintiff

By \_\_\_\_\_  
Attorney

Personally appeared *(name of plaintiff)*  
who made oath to the truth of the  
foregoing application before me on  
*(date)*

\_\_\_\_\_  
*(Title of Authority Taking Oath)*

### PLAINTIFF'S BOND

Know All Men by These Presents:

That we, *(name and residence)* as principal and *(name and residence)*, as surety are holden and firmly bound, jointly and severally unto *(name and residence of defendant)*, hereinafter referred to as the defendant, in the penal sum of \$ \_\_\_\_\_, to which payment and truly to be made we hereby bind ourselves, our heirs, executors, and administrators, firmly by these presents.

The condition of this obligation is such that, whereas the principal has made a motion to the superior court in and for the judicial district of \_\_\_\_\_, that the defendant be held in contempt for failure to pay certain alimony found due from the defendant to the principal by a judgment of the court and whereas the principal has made application to the superior court in and for the judicial district of \_\_\_\_\_ sitting

at \_\_\_\_\_ (or to the Hon. \_\_\_\_\_ a judge of the superior court), that a writ of ne exeat should issue against the defendant, now therefore, if the writ shall issue, and the principal shall fail to prosecute the motion to effect or if she shall have wrongfully sued out the writ, she shall pay to the defendant all proper costs and damages he may have suffered by reason thereof, this bond shall be void, but otherwise to remain in full force and effect.

Dated at *(place and date)*

#### WRIT

To Any Proper Officer:

Whereas the foregoing application of *(name of plaintiff)* duly verified has been presented to  
the superior court for the judicial district of at \_\_\_\_\_  
or  
the undersigned, a judge of the superior court

And whereas, it is found that reasonable cause exists for granting the prayer of the application.

These are, therefore, by authority of the state of Connecticut, to command you to leave a true and attested copy of the application and of this order with *(name and residence)*, and to require him to give a bond, with sufficient surety, in the penal sum of \$ \_\_\_\_\_, payable to the sheriff of the county of or his successors in office, conditioned that he shall not depart from this state, without permission of the court pending the final decision of the motion referred to in the application; and if he shall neglect or refuse to give such bond, upon your demand, you are directed to arrest his body, and commit him to the care of the commissioner of correction or his agent at a community correctional center, and the commissioner is hereby commanded to receive and safely keep him, until he give such bond, or be discharged according to law; and you are further directed to deliver, in such case, to the commissioner or his agent a true and attested copy of this writ, with your doings thereon endorsed.

Hereof fail not, but make due service and return.

Dated at *(place and date)*

By order of the Court,

---

Assistant Clerk  
A Judge of the Superior Court

#### DEFENDANT'S BOND

Know All Men by These Presents:

That we, *(name and residence)* as principal, and *(name and residence)* as surety, are held and firmly bound unto *(name)*, sheriff of \_\_\_\_\_ county or his successors in office, in the penal sum of \$ \_\_\_\_\_, for which payment well and truly to be made we hereby bind ourselves, our heirs, executors and administrators firmly by these presents.

The condition of this bond is such that, whereas there has been duly served upon *(name)* a writ of ne exeat, issued by the superior court for the judicial district of \_\_\_\_\_ at \_\_\_\_\_ (or the Hon. \_\_\_\_\_, a judge of the superior court), on the application of *(name)* enjoining the principal from leaving this state without the permission of the court pending the decision of a certain motion made by *(name)*, that the principal be held in contempt of court for failing to pay certain alimony claimed by her, now therefore, if the principal shall not leave this state without the permission of the court, pending the final determination of the motion, this obligation shall be void, otherwise to remain in full force and effect.

Dated at *(place and date)*

L.S.  
L.S.

# Chapter 3

## Visitation Actions in Connecticut

*A Guide to Resources in the Law Library*

“Minor children are entitled to the love and companionship of both parents. For the good of the child, unless a parent is completely unfit, a decree should allow a parent deprived of custody to visit or communicate with the children under such restrictions as the circumstances warrant... A parent’s privilege of visitation of children whose custody has been awarded to the other parent ... is not an absolute right but one which is dependent on what is for the best interests of the children even though such visitation rights may be restricted or effectively terminated.” Raymond v. Raymond, 165 Conn. 735, 741, 345 A.2d 48 (1974).

### Sections in this chapter:

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§ 3.2 THIRD PARTY VISITATION ACTIONS .....	60
§ 3.3 TEMPORARY OR PENDENTE LITE VISITATION ORDERS .....	63
§ 3.4 PREFERENCE OF THE CHILD .....	65
§ 3.6 MODIFICATION OF VISITATION ORDERS .....	67
§ 3.7 CONTEMPT OF VISITATION ORDERS .....	70
§ 3.8 HABEAS CORPUS VISITATION PROCEEDINGS .....	72
§ 3.9 RELOCATION AND CHILD VISITATION ORDERS .....	75

### TABLES IN THIS CHAPTER:

Table 9 Sibling Visitation in Connecticut

**Web sites:**

[http://www.larcc.org/pamphlets/children\\_family.htm](http://www.larcc.org/pamphlets/children_family.htm)

[http://www.law.cornell.edu/topics/child\\_custody.html](http://www.law.cornell.edu/topics/child_custody.html)

[http://www.nolo.com/encyclopedia/div\\_ency.html#Subtopic82](http://www.nolo.com/encyclopedia/div_ency.html#Subtopic82)

<http://www.findlaw.com/01topics/15family/sites.html>



## Section 3.1

# Application for Visitation

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*A Guide to Resources in the Law Library*

**SCOPE:** Bibliographic resources relating to actions seeking court ordered visitation when parents are unmarried or when married couples live separately but have not initiated divorce proceedings.

**SEE ALSO:** [Best Interest of the Child Standard in Connecticut](#)  
[Child Custody Actions in Connecticut](#)

**STATUTES:** CONN. GEN. STAT. (2003)

- § 45a-604 Definitions
- § 45a-606 Father and mother joint guardians
- § 46b-54 Counsel for minor children. Duties.
- § 46b-56 Superior Court orders re custody and care of minor children ...
- § 46b-57 Third party intervention re custody of minor children. Preference of the child
- § 46b-59a Mediation of disputes re enforcement of visitation rights
- § 46b-61 Orders re Children where parents live separately
- § 46b-64 Orders of court prior to return day of complaint
- §§ 46b-115—46b-115gg *Uniform Child Custody Jurisdiction & Enforcement Act*

**COURT RULES** CONNECTICUT PRACTICE BOOK (2004 ed.)

- Chapter 25, *Superior Court - Procedure in Family Matters*
  - § 25-4 Action for Visitation of Minor Child
  - § 25-5 Automatic Orders Upon Service of Complaint
  - § 25-9 Answer, Cross Complaint, Claims for Relief by Defendant
  - § 25-23 Motions, Requests, Orders of Notice, and Short Calendar
  - § 25-24 Motions
  - § 25-26 Modification of Custody, Alimony or Support
  - § 25-27 Motion for Contempt
  - § 25-28 Order of Notice
  - § 25-30 Statements to be Filed
  - § 25-38 Judgment Files
  - § 25-50 Case Management
  - § 25-57 Affidavit Concerning Children
  - § 25-59 Closed Hearings and Records
  - § 25-60 & §25-61 Family Division Evaluations and Studies
  - § 25-62 Appointment of Guardian Ad Litem

**LEGISLATIVE HISTORY:**

- Public Acts 1974, No. 74-169, § 12, 17 H.R. Proc., Pt. 6, 1974 Sess., p. 2805 [§ 46b-61]

“...expands the jurisdiction of the superior court involving minor children and further states that the section can be used in controversies not only involving a husband and wife but in controversies involving parents of minor children or children if they are no longer married or were never married.”

## **FORMS:**

### Official Forms

- JD-CL-12 Appearance
- JD-FM-75 Application for Waiver of Fees
- JD-FM-160 Answer
- JD-FM-161 Custody / Visitation Application
- JD-FM-162 Order to Attend Hearing and Notice to the Defendant
- JD-FM-158 Notice of Automatic Orders
- JD-FM-164 Affidavit Concerning Children
- JD-FM-164A Addendum to Affidavit Concerning Children
- JD-FM-167 Motion for Notice by Publication or Mail in Family Cases
- JD-FM-168 Order of Notice by Publication or Mail in Family Cases
- JD-FM-160 Answer
- JD-FM-176 Motion for Orders Before Judgment (Pendente Lite)
- JD-FM-6 Financial Affidavit
- JD-FM-173 Motion for Contempt
- JD-FM-174 Motion for Modification
- JD-FM-183 Custody/Visitation Agreement
- JD-FM-185 Motion for Intervention in Family Matters

### *Unofficial Forms*

- MARY ELLEN WYNN & ELLEN B. LUBELL, HANDBOOK OF FORMS FOR THE CONNECTICUT FAMILY LAWYER 97 (1991).
- Modification of Automatic Orders  
BARBARA KAHN STARK ET AL., FRIENDLY DIVORCE GUIDEBOOK FOR CONNECTICUT 369 (1998).
- Visitation Schedule  
FAMILY LAW PRACTICE IN CONNECTICUT, Law Practice Handbooks, Inc. 10-62 (1996).  
“Sample Visitation Order”, p. 10-62.

## **CASES:**

- Laspina-Williams v. Laspina-Williams, 46 Conn. Supp. 165, 171, 742 A.2d 840 (1999). *Petition for visitation rights with the biological child of the defendant; the child was conceived through alternative insemination and had been jointly raised by the plaintiff and defendant who were same-sex partners.* “... the defendant allowed, even encouraged, the plaintiff to assume a significant role in the life of the child such that she is a party entitled to seek visitation with the child.”
- Temple v. Meyer, 208 Conn. 404, 544 A.2d 629 (1988).
- Ridgeway v. Ridgeway, 180 Conn. 533, 541, 429 A.2d 801 (1980). “In this case, the evidence showed ... that the plaintiff’s psychological instability was such that it posed a threat to the children’s self-being.” *Visitation limited to one day per week*
- Raymond v. Raymond, 165 Conn. 735, 742, 345 A.2d 48 (1974). “It has never been our law that support payments were conditioned on the ability to exercise rights of visitation or vice versa. The duty to support is wholly independent of the right of visitation.”

## **WEST KEY**

- *Child Custody* # 175-231

**NUMBERS:**

- *Children out of Wedlock* # 20.9
- *Infants* # 19.3(4)

**TEXTS &  
TREATISES:**

- 8 ARNOLD H. RUTKIN ET AL., CONNECTICUT PRACTICE: FAMILY LAW AND PRACTICE WITH FORMS §§ 41.1—41.46, 42.40—42.45 (2000).
- FAMILY LAW PRACTICE IN CONNECTICUT, Law Practice Handbooks, Inc. §§ 10.37—10.39(1996).
- 3 SANDRA MORGAN LITTLE, CHILD CUSTODY & VISITATION LAW AND PRACTICE §§ 16.01—16.14 (2004).
- DONALD T. KRAMER, LEGAL RIGHTS OF CHILDREN §§ 3.01—3.15 (2d ed. 1994).

**ENCYCLOPEDIAS:**

- 59 AM. JUR. 2D *Parent & child* § 36 (1987).
- Robin Cheryl Miller, Annotation, *Restrictions on Parent's Child Visitation Rights Based on Parent's Sexual Conduct*, 99 A.L.R. 5<sup>th</sup> 474 (2002).
- Robin Cheryl Miller, Annotation, *Child Custody and Visitation Rights Arising From Same-Sex Relationship*, 80 A.L.R. 5<sup>th</sup> 1 (2000).
- Harriet Dinegar Milks, Annotation, *Smoking as Factor in Child Custody and Visitation Cases*, 36 A.L.R. 5<sup>th</sup> 377 (1996).
- Mary E. Taylor, Annotation, *Parent's Use of Drugs as a Factor in Award of Custody of Children, Visitation Rights, or Termination of Parental Rights*, 20 A.L.R. 5<sup>th</sup> 534 (1994).
- Claudia G. Catalano, Annotation, *Child Custody and Visitation Rights of Person Infected with AIDS*, 86 A.L.R. 4<sup>th</sup> 211 (1991).
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Section 3.2

# Third Party Visitation Actions

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*A Guide to Resources in the Law Library*

- SCOPE:** Bibliographic resources relating to right of nonparents to initiate child visitation actions or to seek visitation by intervening in a pending family action.
- SEE ALSO:** [Grandparent Rights in Connecticut](#)
- STATUTES:** CONN. GEN. STATUTES (2003)
- § 46b-56 Superior Court orders re custody and care of minor children ...
  - § 46b-57 Third party intervention re custody of minor children. Preference of child.
  - § 46b-59 Court may grant right of visitation to any person.
- LEGISLATIVE REPORT:**
- **Saul Spiegel, Grandparents' Custody of Grandchildren, CONNECTICUT GENERAL ASSEMBLY, [OFFICE OF LEGISLATIVE RESEARCH](#), REPORT NO. 2003-R-0596 (SEPTEMBER 22, 2003).**
- COURT RULES** CONNECTICUT PRACTICE BOOK (2004 ed.)
- Chapter 25 Superior Court - Procedure in Family Matters
    - § 25-1 Definitions Applicable to Proceedings on Family Matters
    - § 25-4 Action for Visitation of Minor Child
    - § 25-23 Motions, Requests, Orders of Notice, and Short Calendar
    - § 25-59 Closed Hearings and Records
    - § 25-62 Appointment of Guardian Ad Litem
- FORMS:** [Official Forms](#)
- JD-CL-12 Appearance
  - JD-FM-75 Application for Waiver of Fees
  - JD-FM-161 Custody / Visitation Application
  - JD-FM-162 Order to Attend Hearing and Notice to the Defendant
  - JD-FM-158 Notice of Automatic Orders
  - JD-FM-164 Affidavit Concerning Children
  - JD-FM-164A Addendum to Affidavit Concerning Children
  - JD-FM-167 Motion for Notice by Publication or Mail in Family Cases
  - JD-FM-168 Order of Notice by Publication or Mail in Family Cases
  - JD-FM-176 Motion for Orders Before Judgment (Pendente Lite)
  - JD-FM-6 Financial Affidavit
  - JD-FM-173 Motion for Contempt

- JD-FM-174 Motion for Modification
- JD-FM-183 Custody / Visitation Agreement

#### *Unofficial Forms*

- MARY ELLEN WYNN & ELLEN B. LUBELL, HANDBOOK OF FORMS FOR THE CONNECTICUT FAMILY LAWYER 114 -- 115 (1991)  
Form VI-C-7 Grandparents' Motion to Intervene  
Form VI-C-8 Grandparents' Motion for Visitation
- 1A DOUGLAS B. WRIGHT & JOHN H. YEOMANS, CONNECTICUT LEGAL FORMS §1101.14 (1983). "Application of Grandparents to Intervene and for Visitation Rights pending Action."
- *Busa v. Busa*, 24 Conn. App. 426 (1991), Connecticut Appellate Records & Briefs, November 1990  
"Motion to be Made Party Defendants"
- 8b AM JUR PLEADING AND PRACTICE FORMS *Divorce & Separation*  
§ 91 "Petition - By Grandparent - For Visitation Rights"  
§ 91 "Affidavit - By Grandparent - In Support of Petition for Visitation"  
§ 930 "Petition or Application - By Grandparent - To Modify Child Custody Award Giving Grandparent Visitation Rights"

#### **CASES:**

- [Troxel v. Granville](#), 530 U.S. 57, 68, 120 S.Ct. 2054, 2061. (2000).  
"Accordingly, so long as a parent adequately cares for his or her children ... there will normally be no reason for the State to inject itself into the private realm of the family to further question the ability of that parent to make the best decisions concerning the rearing of that parent's children."
- *Roth v. Weston*, 259 Conn. 202, 789 A.2d 231 (2002). *Petition for visitation by maternal grandmother and maternal aunt pursuant to Conn. Gen. Stat. § 46b-59*.  
"In the absence of a threshold requirement of a finding of real and substantial harm to the child as a result of the denial of visitation, forced intervention by a third party seeking visitation is an unwarranted intrusion into family autonomy. Accordingly, in the absence of any such requirement of harm, § 46b-59 does not justify interference with parental rights." (229)  
"... the petition must contain specific, good faith allegations that the petitioner has a relationship with the child that is similar in nature to a parent-child relationship. The petition must also contain specific, good faith allegations that the denial of the visitation will cause real and significant harm to the child... Second, the petitioner must prove these allegations by clear and convincing evidence." (235)
- *Crocket v. Pastore*, 259 Conn. 240, 246, 789 A.2d 453 (2002). *Petition for visitation by maternal grandmother* "This case is controlled by our concurrent decision in *Roth*, wherein we overruled our previous decision in *Castagno*..."
- *Castagno v. Wholean*, 239 Conn. 336, 352, 684 A.2d 1181 (1996), *overruled by Roth v. Weston*, 259 Conn. 202, 789 A.2d 431 (2002).
- *In Re Felicia B.*, 56 Conn. App. 525, 743 A.2d 1160 (2000), *cert. denied*, 252 Conn. 952 (2000). Paternal grandparents were denied both custody and visitation in a case where the father's parental rights were terminated. "...they cannot safeguard and provide care in the children's best interests while clinging to the hope that their son did not sexually abuse their grandchildren" (p. 527).
- *Alexander v. Gomez*, 34 Conn. L. Rptr. 660 (Conn. Super., Danbury, may 30, 2003) 2003 Conn. Super. Lexis 1586. "The plaintiff argues that applying

Roth retroactively would be a substantial injustice to the plaintiff. This court agrees. The court in Roth noted that applying the new standard to the specific complaint allegations in the case before it would be ‘manifestly unfair, because these requirements are newly stated, and the plaintiffs could not have anticipated their adoption.’ Id., 235... For the foregoing reasons, the defendant’s motion to modify and eliminate the plaintiff’s visitation rights is denied, without prejudice, and the plaintiff will be allowed an opportunity to amend her application and provide proof that it is consistent with all the requirements of Roth.”

- *Pivnick v. Lasky*, 34 Conn. L. Rptr. 426 (Conn. Super., Hartford, Mar. 24, 2003), 2003 Conn. Super. Lexis 944. “The question presented by this motion is whether the standard articulated in *Roth v. Weston*, invalidates the prior orders in this case which have allowed for grandparent visitation... The court concludes that the decision of *Roth v. Weston* does override the prior court orders in this matter granting visitation rights to third parties against the wishes of a fit custodial parent.”

**WEST KEY  
NUMBERS:**

- *Child Custody* # 181, # 270
- *Infants* #19.3(4)

**TEXTS &  
TREATISES:**

- 8 ARNOLD H. RUTKIN ET AL., CONNECTICUT PRACTICE: FAMILY LAW AND PRACTICE WITH FORMS §42.45 (2000).
- 2 SANDRA MORGAN LITTLE, CHILD CUSTODY & VISITATION LAW AND PRACTICE Ch. 11 (2004).
- ANN M. HARALAMBIE, HANDLING CHILD CUSTODY, ABUSE AND ADOPTION CASES Ch. 10 (1993).

**ENCYCLOPEDIAS:**

- George L. Blum, Annotation, *Grandparents’ Visitation Rights Where Child’s Parents are Living*, 71 A.L.R. 5<sup>th</sup> 99 (1999).
- Alan A. Stephens, Annotation, *Parental Rights of Man Who is not Biological or Adoptive Father of Child but was Husband or Cohabitant of Mother When Child was Conceived or Born*, 84 A.L.R. 4<sup>th</sup> 655 (1991).
- Annotation, *Visitation Rights of Persons Other than Natural Parents or Grandparents*, 1 A.L.R. 4<sup>th</sup> 1270 (1980).
- Annotation, *Grandparent Visitation Rights*, 90 ALR 3d 222 (1979).

**ARTICLES:**

- John R. Logan, *Connecticut’s Visitation Statute After ‘Troxel v. Granville,’* CONN. LAW. NOV. 2000, at 4.
- Kimberly R. Lusk, *What Rights Do You Have to My Child? Analysis of Stepparent Visitation Rights*, 23 CHILD. LEGAL RTS. J., Fall 2003, at 21.
- Eric B. Martin, Comment, *Grandma Got Run Over by the Supreme Court: Suggestions for a Constitutional Nonparental Visitation Statute After Troxel v. Granville*, 76 WASH. L. REV. 571 (2001).
- Eric B. Martin, *Maintaining Sibling Relationships for Children Removed from Their Parents*, CHILDREN’S LEGAL RTS. J., Winter 2002-2003, at 47.
- Ellen Marrus, “Where Have You Been Fran?” *The Right of Siblings to Seek Court Access to Override Parental Denial of Visitation*, 66 TENN. L. REV. 977 (1999).
- Laura W. Morgan, *Stepparents’ and Cohabitants’ Rights to Custody and Visitation*, in 1999 WILEY FAMILY LAW UPDATE 249 (1999).
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## Section 3.3

# Temporary or Pendente Lite Visitation Orders

*A Guide to Resources in the Law Library*

- SCOPE:** Bibliographic resources relating to temporary visitation orders issued while a family action is pending.
- DEFINITION:**
- “**Pendente lite** orders, by their very definition, are orders that continue to be in force ‘during the pendency of a suit, action, or litigation.’ Ballentine’s Law Dictionary (3d ed., 1969.” Febbrioriello v. Febbrioriello, 21 Conn. App. 200, 206, 572 A.2d 1032 (1990).
  - “**Pendente lite** orders necessarily cease to exist once a final judgment in the dispute has been rendered because their purpose is extinguished at that time.” Connolly v. Connolly, 191 Conn. 468, 480, 464 A.2d 837 (1983).
- STATUTES:** CONN. GEN. STAT. (2003)
- § 46b-56 Superior Court orders re custody and care of minor children ...
  - § 46b-64 Orders of court prior to return day of complaint
- COURT RULES** CONNECTICUT PRACTICE BOOK (2004 ed.)
- § 25-23 Motions, Requests, Orders of Notice, and Short Calendar
  - § 25-24 Motions
    - (b) Each such motion shall state clearly in the caption of the motion, whether it is a pendente lite or a postjudgment motion.
  - § 25-26 Modification of Custody, Alimony or Support
- FORMS:**
- [JD-FM-176 Motion for Orders Before Judgment](#) (Pendente Lite)
  - MARY ELLEN WYNN & ELLEN B. LUBELL, HANDBOOK OF FORMS FOR THE CONNECTICUT FAMILY LAWYER 97 (1991).
  - Gardner v. Falvey, 45 Conn. App. 699 (1997), Connecticut Appellate Records & Briefs, February 1997.
    - “Motion for Specific Visitation, Pendente Lite”
- TEXTS & TREATISES:**
- 8 ARNOLD H. RUTKIN ET AL., CONNECTICUT PRACTICE: FAMILY LAW AND PRACTICE WITH FORMS §§ 41.1—41.6 (2000).
  - BARBARA KAHN STARK, FRIENDLY DIVORCE GUIDEBOOK FOR CONNECTICUT 124-127 (2d ed., 2003).
  - FAMILY LAW PRACTICE IN CONNECTICUT 10-17, Law Practice Handbooks, Inc. (1996).

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## Section 3.4

# Preference of the Child in Visitation Actions

*A Guide to Resources in the Law Library*

- SCOPE:** Bibliographic resources relating to the consideration courts give to the wishes of the child when making child visitation orders.
- STATUTES:** CONN. GEN. STAT. (2003)
- § 46b-56 (b) “In making or modifying any order with respect to custody or visitation, the court shall (1) be guided by the best interests of the child, giving consideration to the wishes of the child if the child is of sufficient age and capable of forming an intelligent preference,…”
  - § 46b-57 Third party intervention re custody of minor children. Preference of child
  - § 46b-59 Court may grant right of visitation to any person
- COURT RULES:** CONNECTICUT PRACTICE BOOK (2004 ed.)
- § 25-60 Family Division Evaluations and Studies
- CASES:**
- *Szczerkowski v. Karmelowicz*, 60 Conn. App. 429, 434 (2000). “Indeed, as the court succinctly stated, ‘We’re trying to respond to the articulated needs of the children to spend more time with [the plaintiff].’ No other rational reading of the court’s language is possible but that it was acting in the children’s best interests when it modified visitation…”
  - *Knock v. Knock*, 224 Conn. 776, 788, 621 A.2d 267 (1993). “Section 46b-56(b) does not require that the trial court award custody to whomever the child wishes; it requires only that the court take the child’s wishes into consideration.”
  - *Gennarini v. Gennarini*, 2 Conn. App. 132, 137, 477 A.2d 674 (1984). “...whether the child’s preferences and feelings as to custody and visitation are a significant factor in the court’s ultimate determination ... will depend on all the facts of the particular case, including the child’s age and ability intelligently to form and express those preferences and feelings.” (p. 137)
  - *Hamele v. Hamele*, 5 Conn. L. Rptr. 795 (Bridgeport Super. Ct. Dec. 31, 1991), 91 WL 288142, 1991 Conn. Super. Lexis 3108. *The court refused to make an order requiring a 15 year old child to visit with his father in prison after the child testified that he did not wish to do so.*
  - *Kawaller v. Kawaller*, Superior Court, judicial district of Hartford-New Britain at Hartford, Docket No. 241310 (July 22, 1986), 1 C.S.C.R. 566.  
“... it is the desire of all parties that the court modify the existing orders pertaining to visitation and transportation ... In so doing, the court is guided

by the best interests of the child, ... age 11, giving consideration to his wishes as is set forth in Conn. Gen. Stat. §46b-56(b).”

**WEST KEY  
NUMBERS:**

- *Child Custody* # 204
- *Infants* #19.2 (4)

**TEXTS &  
TREATISES:**

- 8 ARNOLD H. RUTKIN ET AL., CONNECTICUT PRACTICE: FAMILY LAW AND PRACTICE WITH FORMS § 42.27 (2000).
- FAMILY LAW PRACTICE IN CONNECTICUT § 10.32, Law Practice Handbooks, Inc. (1996).
- 3 SANDRA MORGAN LITTLE, CHILD CUSTODY & VISITATION LAW AND PRACTICE § 16.05 (2004).
- ANN M. HARALAMBIE, THE CHILD’S ATTORNEY: A GUIDE TO REPRESENTING CHILDREN IN CUSTODY, ADOPTION, AND PROTECTION CASES 30—33 (1993).

**LAW REVIEWS:**

- Steven Sichel, *The Child’s Preference in Disputed Custody Cases*, 6 Conn. Fam. Law. 45 (1991).
- Barbara L House, Comment, *Considering the Child’s Preference in Determining Custody: Is it Really in the Child’s Best Interest?* 19 J. JUV. L. 176 (1998).
- Kathleen Nemechek, *Child Preference in Custody Decisions: Where We Have Been, Where We Are Going, Where We Should Go*. 83 IOWA L. REV. 437 (1998). [available at the Bridgeport Law Library]

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# Section 3.6

## Modification of Child Visitation Orders

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*A Guide to Resources in the Law Library*

- SCOPE:** Bibliographic resources relating to the grounds and procedures for modification of child visitation orders.
- DEFINITIONS:**
- “**Child custody determination**” means a judgment, decree, or other order of a court providing for the legal custody, physical custody or visitation with respect to a child...” 1999 Conn. Acts 185 §2(3).
  - “**Modification**” means a child custody determination that changes, replaces, supercedes or is otherwise made after a previous determination concerning the same child, whether or not it is made by the court that made the prior custody determination.” 1999 Conn. Acts 185 §2(11).
- STATUTES:** CONN. GEN. STAT. (2003)
- § 46b-56 Superior court orders re custody and care of minor children in actions for dissolution of marriage, legal separation and annulment
  - § 46b-59 Court may Grant right of visitation to any person
  - § 46b-59a Mediation of disputes re enforcement of visitation rights
  - § 46b-61 Orders re children where parents live separately
  - § 46b-71 Filing of foreign matrimonial judgment; enforcement in this state  
(b) “...A foreign matrimonial judgment so filed ... is subject to the same procedures for modifying ... as a judgment of a court of this state; provided ... the substantive law of the foreign state shall be controlling.”
  - § 46b-115m Modification of custody determination of another state.
  - § 46b-115w Registration of child custody determination
- COURT RULES** CONNECTICUT PRACTICE BOOK (2004 ed.)
- § 25-26 Modification of Custody, Alimony or Support
  - § 25-30 Statements to be filed
- LEGISLATIVE REPORTS:**
- Saul Spigel, **Modifying Visitation Orders After Divorce**, CONNECTICUT GENERAL ASSEMBLY, [OFFICE OF LEGISLATIVE RESEARCH](#), REPORT NO. 2001-R-0250 (FEBRUARY 23, 2001).
- FORMS:** [Official Forms](#)
- JD-FM-174 “Motion for Modification”
  - JD-FM-136 “Motion for Modification of Visitation Order
  - JD-FM-135 “Motion for Contempt Citation/Motion for Modification

#### *Unofficial Forms*

- Ruggiero v. Ruggiero, 76 Conn. App. 338 (2003), Connecticut Appellate Court Records & Briefs, January 2003.  
*Ex Parte Motion for Modification of Visitation and Custody* (p.28)
- 8 ARNOLD H. RUTKIN ET AL., CONNECTICUT PRACTICE: FAMILY LAW AND PRACTICE WITH FORMS 592 (2000).
- MARY ELLEN WYNN & ELLEN B. LUBELL, HANDBOOK OF FORMS FOR THE CONNECTICUT FAMILY LAWYER 245 (1991), *Motion to Fix Visitation*
- 2 CONNECTICUT PRACTICE BOOK, Form 506.1.

#### **CASES:**

- McGinty v. McGinty, 66 Conn. App. 35, 40, 783 A.2d 1170 (2001). “In *Szczerkowski*, as here, the defendant claimed that the court abused its discretion by modifying a visitation order without finding that there was a substantial change in circumstances... We concluded that when considering motions to modify visitation, the court’s should apply the best interest of the child standard.”
- Szczerkowski v. Karmelowicz, 60 Conn. App. 429, 433, 759 A.2d 1050 (2000). “The defendant cites no case, and our independent research discloses none, that requires a court ruling on a motion to modify visitation to find as a threshold matter that a change of circumstances has occurred. Rather, the standard the court applies is that of the best interest of the child.”
- Kioukis v. Kioukis, 185 Conn. 249, 440 A.2d 894 (1981) At the time of the action to modify visitation Connecticut was not the “home state” of the child and therefore lacked jurisdiction to grant a modification.  
Support payments are independent of visitation rights.
- Baumert v. Baumert, 19 Conn. L. Rptr. 59 (Stamford Super. Ct. Jan. 28, 1997), 1997 WL 66500, 1997 Conn. Super. Lexis 268. The court concluded that Texas should have jurisdiction to hear a motion to modify visitation based on the fact that “all visitation took place in Texas” and “Texas would seem to possess the greater information as to the child’s best interests”.
- Pfister v. Pfister, Docket No. FA890263992S (Bridgeport Super. Ct. June 10, 1997), 1997 WL 334903, 1997 Conn. Super. Lexis 1578. “The children would benefit emotionally by increasing the father’s visitation to allow their relationship to grow in a loving and positive manner. Section 46b-56(a).”
- Serrel v. Serrel, Docket No. FA940138147S (Stamford Super. Ct. December 17, 1996), 1996 WL 745868, 1996 Conn. Super. Lexis 3373. “It is found to be in the best interests of the older child that visitation with her father be suspended. It is found to be in the best interests of the younger child that overnight visitation be suspended until suitable home or home-like quarters are obtained by the defendant and the court finds such to be the case in a future hearing.”

#### **WEST KEY NUMBERS:**

- *Children out of Wedlock* # 20.10
- *Child Custody* #577

#### **TEXTS & TREATISES:**

- HOW TO MODIFY AND ENFORCE CHILD VISITATION ORDERS, [Legal Assistance Resource Center of Connecticut](#) (2003)).
- 8 ARNOLD H. RUTKIN ET AL., CONNECTICUT PRACTICE: FAMILY LAW AND PRACTICE WITH FORMS 588 (2000).
- FAMILY LAW PRACTICE IN CONNECTICUT 10-17, Law Practice Handbooks, Inc. 10-39—10-44 (1996).
- 4 SANDRA MORGAN LITTLE, CHILD CUSTODY & VISITATION LAW AND PRACTICE Ch. 25 (2004).

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# Section 3.7

## Contempt of Visitation Orders

*A Guide to Resources in the Law Library*

- SCOPE:** Bibliographic resources relating to the use of contempt proceedings to enforce visitation orders.
- DEFINITIONS:**
- “While particular acts do not always readily lend themselves to classification as civil or criminal contempts, a **contempt** is considered **civil** when the punishment is wholly remedial, serves only the purposes of the complainant, and is not intended as a deterrent to offenses against the public.” *McCrone v. United States*, 307 U.S. 61, 64, 59 S. Ct. 685, 686 (1939)
  - “**Civil contempt** is conduct directed against the rights of the opposing party.” *Tatro v. Tatro*, 24 Conn. App. 180, 185 (1991)
- STATUTES:** CONN. GEN. STAT. (2003)
- § 46b-87 Contempt of orders
  - § 46b-87a Forms and instructions for application for contempt order based on violation of visitation order
- COURT RULES** CONNECTICUT PRACTICE BOOK (2004 ed.)
- § 25-27 Motion for Contempt
  - § 25-63 Right to Counsel in Family Civil Contempt Proceedings
  - § 25-64 Waiver
  - § 23-20 Review of Civil Contempt
- FORMS:** [Official Forms](#)
- JD-FM-173 “Motion for Contempt”
  - JD-FM-135 “Motion for Contempt Citation/Motion for Modification”
- Unofficial Forms*
- MARY ELLEN WYNN & ELLEN B. LUBELL, HANDBOOK OF FORMS FOR THE CONNECTICUT FAMILY LAWYER 188 (1991).  
Form No. XI-A-1 “Motion for Contempt” [pendente lite]  
Form No. XI-A-3a to XI-A-3c “Application for Order to Show Cause and Contempt Citation” [post judgment]
- CASES:**
- *Wilson v. Wilson*, 38 Conn. App. 263, 661 A.2d 621 (1995).
  - *Tatro v. Tatro*, 24 Conn. App. 180, 186, 587 A.2d 154 (1991). “The inability of a contemnor to obey a court order through no fault of her own is a defense to a claim of contempt... The act for which the penalty was

imposed cannot constitute contempt if the actor was unable to obey the order.”

- Tufano v. Tufano, 18 Conn. App. 119 (1989). The plaintiff mother was found in contempt for willful violation of the visitation rights granted to the paternal grandparents.
- Gilman v. Gilman, Docket No. 385930 (New Haven Super. Ct. May 14, 1997), 1997 WL 276459, 1997 Conn. Super. Lexis 1284. “... the court has serious concerns as to whether the plaintiff fully appreciates the importance of complying with the court’s orders and the consequences for not doing so. It is fundamentally important that the children have visitation with their father according to the court’s schedule. In order to insure that visitation occurs when scheduled, the court imposes a fine of \$150 for every visitation missed, now and in the future, due to the plaintiff’s willful actions. The court also finds that an award to the defendant of attorney fees in the amount of \$750 ... is reasonable.”

**WEST KEY  
NUMBERS:**

- *Child Custody* # 851—874

**TEXTS &  
TREATISES:**

- HOW TO GET A CONTEMPT ORDER (WHEN COURT ORDERS ARE NOT BEING OBEYED), [Legal Assistance Resource Center of Connecticut](#) (2003).
- 8 ARNOLD H. RUTKIN ET AL., CONNECTICUT PRACTICE: FAMILY LAW AND PRACTICE WITH FORMS §§ 43.4—43.7 (2000).
- FAMILY LAW PRACTICE IN CONNECTICUT 10-36, Law Practice Handbooks, Inc. (1996).
- 4 SANDRA MORGAN LITTLE, CHILD CUSTODY & VISITATION LAW AND PRACTICE § 25.05 (2004).

**ENCYCLOPEDIAS:**

- M. Anderson Ketchum. “Denial of Child Visitation Rights”, 2 Am. Jur. Proof of Facts 2d 791 (1974).

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## Section 3.8

# Habeas Corpus Proceedings in Child Visitation Matters

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*A Guide to Resources in the Law Library*

### **SCOPE:**

Bibliographic resources relating to the applicability of a writ of habeas corpus in child visitation matters and form preparation and procedure in habeas corpus visitation proceedings.

### **DEFINITION:**

- “The employment of the forms of habeas corpus in a child custody case is not for the purpose of testing the legality of a confinement or restraint as contemplated by the ancient common-law writ... The primary purpose is to furnish a means by which the court ... may determine what is best for the welfare of the child. Howarth v. Northcott, 152 Conn. 460, 464 (1965).
- “A habeas corpus petition concerning a minor child’s custody is an equitable proceeding in which the trial court is called upon to decide, in the best exercise of its sound discretion, the custodial placement which will be best for the child.” Evans v. Santoro, 6 Conn. App. 707, 709 (1986).

### **STATUTES:**

CONN. GEN. STAT. (2003)

- § 45a-606 Father and mother joint guardians
- § 46b-1(8), (9) Family relations matters defined
- § 52-466 Application for writ of habeas corpus. Service. Return.
- § 52-467 Punishment for refusal to obey writ or accept copy.
- § 52-493 Order in the nature of prerogative writs

### **COURT RULES**

CONNECTICUT PRACTICE BOOK (2004 ed.)

- § 25-40 Habeas Corpus in Family; The Petition
- § 25-41 --Preliminary Consideration
- § 25-42 --Dismissal
- § 25-43 --The Return
- § 25-44 --Reply to the Return
- § 25-45 --Schedule for filing Pleadings
- § 25-46 --Summary Judgment as to Writ of Habeas Corpus
- § 25-47 --Discovery

### **FORMS:**

- 8 ARNOLD H. RUTKIN ET AL., CONNECTICUT PRACTICE: FAMILY LAW AND PRACTICE WITH FORMS § 43.9 (2000).
- MARY ELLEN WYNN & ELLEN B. LUBELL, HANDBOOK OF FORMS FOR THE CONNECTICUT FAMILY LAWYER 175-183 (1991)



### CASES:

- In Re Jonathan M., 255 Conn. 208, 223, 764 A.2d 739 (2001). “The primary issue in this appeal is whether the habeas petition may be employed as a means of testing the merits of the termination judgment, and not solely as a means of bringing challenges to custody and visitation orders. Although the petitioner’s parental rights have been terminated by a presumptively valid judgment ... to foreclose, on jurisdictional grounds, his ability to seek custody and assert subsequent challenges to the termination judgment, whether through a petition for a writ of habeas corpus or other means, would require a circular course of reasoning in which we are unprepared to indulge.”
- Weidenbacher v. Duclos, 234 Conn. 51, 73, 661 A.2d 988 (1995). “... we hold that the mere fact that a child was born while the mother was married is not a per se bar that prevents a man other than her husband from establishing standing to bring an action for a writ of habeas corpus for custody of or visitation with a minor child.”
- Doe v. Doe, 163 Conn. 340, 307 A.2d 166 (1972). The court held that only parents and legal guardians have standing to bring an action for habeas corpus seeking visitation rights.
- Evans v. Santoro, 6 Conn. App. 707, 709, 507 A.2d 116 (1986). “In order to invoke the aid of a habeas corpus writ to enforce a right to physical custody of a minor, the applicant for the writ must show a prima facie legal right to custody... Once the writ has issued, the burden of proving that a change of custody would be in the child’s best interest rests upon the party seeking the change... In this case, that party was the petitioner.”
- Axelrod v. Avery, Superior Court, judicial district of New London at New London, Docket No. 532395 (Dec. 1, 1994), 13 Conn. L. Rptr. 124, 1994 Conn. Super. Lexis 3058. “The language of Nye arguably extends standing in habeas corpus petitions from the narrow construction in Doe to a broad construction which include members of a child’s biological family... Moreover, a finding of standing is appropriate on the facts ... because the plaintiffs have a sufficient ‘personal stake in the outcome of the controversy,’ namely the custody of their granddaughter and the maintenance of a familial relationship with her.”
- Forestiere v. Doyle, 30 Conn. Supp. 284, 288, 31 A. 2d 607 (1973). *Plaintiff father’s petition for a writ of habeas corpus seeking visitation rights* “... to deny him visitation rights without a hearing on the ultimate question of what is best for the welfare of the child is to deny him his constitutional rights.”

### WEST KEY NUMBERS:

- *Habeas Corpus* #532 (1,2)

### TEXTS & TREATISES:

- 8 ARNOLD H. RUTKIN ET AL., *CONNECTICUT PRACTICE: FAMILY LAW AND PRACTICE WITH FORMS* §§ 43.8—43.9 (2000).
- *FAMILY LAW PRACTICE IN CONNECTICUT* 10-37, Law Practice Handbooks, Inc. (1996).
- 1 SANDRA MORGAN LITTLE, *CHILD CUSTODY & VISITATION LAW AND PRACTICE* § 6.06 (2004).

### LAW REVIEWS:

- Paul J. Buser, *Habeas Corpus Litigation in Child Custody Matters: An Historical Mine Field*, 2 JOURNAL OF THE AMERICAN ACADEMY OF MATRIMONIAL LAWYERS, Winter 1993, at 1.  
(available at the Norwich Law Library)

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# Section 3.9

## Relocation and Child Visitation Orders

*A Guide to Resources in the Law Library*

### **SCOPE:**

Bibliographic resources relating to the impact of relocation on visitation orders and the role of the courts in controversies where the noncustodial parent objects to the relocation of the custodial parent.

### **FORMS:**

- MARY ELLEN WYNN & ELLEN B. LUBELL, HANDBOOK OF FORMS FOR THE CONNECTICUT FAMILY LAWYER 109 (1991). Motion for Restraining Order.
- Ireland v. Ireland, 246 Conn. 413, 428, 717 A.2d 676 (1998), Connecticut Supreme Court Records and Briefs, May/June 1998.  
*Amended Motion to Enjoin and Restrain*  
*Motion for Permission for Plaintiff to Reside in California with the Minor Child*
- 7 AM. JUR. PLEADING & PRACTICE FORMS *Contempt* § 130.  
“Removal of child from jurisdiction with intent to deprive person of part-time custody and visitation rights”

### **CASES:**

- Bretherton v. Bretherton, 72 Conn. App. 528, 538, 805 A.2d 766 (2002).  
“The issue now arises whether our Supreme Court, in articulating the burden shifting scheme, intended summarily to preclude a custodial parent who fails to demonstrate by a preponderance of the evidence ‘that the relocation is for a legitimate purpose and, further, that the proposed location is reasonable in light of that purpose’ ... from relocating with the parties’ minor children without also considering the best interests of the children. Our reading of *Ireland* causes us to conclude that our Supreme Court did not intend to abandon the legal standard for custody decision-making solely on a custodial parent’s failure to meet the initial burden of proof.”
- Ireland v. Ireland, 246 Conn. 413, 428, 717 A.2d 676 (1998). “In summary, we hold, therefore, that a custodial parent seeking permission to relocate bears the initial burden of demonstrating, by a preponderance of the evidence, that (1) the relocation is for a legitimate purpose, and (2) the proposed location is reasonable in light of the purpose. Once the custodial parent has made such a prima facie showing, the burden shifts to the noncustodial parent to prove by a preponderance of the evidence, that the relocation would not be in the best interests of the child.”
- Ford v. Ford, 68 Conn. App. 173, 184, 789 A. 2d 1104 (2002). *The rational in the Ireland decision determined to be* “limited to postjudgment relocation cases.”  
“To apply the Ireland burden-shifting rational to custody issues at judgment

- would unfairly impact the equilibrium of the parties.” (181)
- Azia v. Dilascia, 64 Conn. App. 540, 550, 780 A.2d 992 (2001). “Because the court did apply the *Ireland* factors in reaching its custody decision, we will assume, without deciding, that such application was proper... *Ireland* does not mandate that a court consider each factor individually and separately.”
  - Raymond v. Raymond, 165 Conn. 735, 740, 345 A.2d 48 (1974). “A divorce decree which awards the custody of a child to one parent with permission to the other to visit the child at reasonable times and places but which does not expressly restrict the residence of the child, does not impliedly prohibit the removal of the child from the state.”
  - Jones v. Jones, Docket No. FA990173261 (Middletown Super. Ct. Nov. 10, 2003). 2003 Conn. Super. Lexis 3369. “The court finds that Ms. Jones has failed to sustain her burden of proof that the move to Florida is reasonable in light of the reason therefor: Marriage... That said, then the quality and depth and continuity of these children’s very important relationship with their father should not be disturbed. The court grants the injunction applied for by Mr. Jones: Ms. Jones is enjoined from relocating the residence of the two minor children to Florida.”
  - Armstrong v. Armstrong, Docket No. FA010828168-S (Hartford Super. Ct. July 25, 2002). “The court concludes that the plaintiff should be designated as the primary physical custodian and that relocation of the children to Chicago will be in the best interest of the children.”  
“In addition to the traditional modes of visitation, the parties should consider Internet visitation or videoconferencing (dubbed “virtual visitation”) between the children and the defendant father.”

**WEST KEY  
NUMBERS:**

- *Child Custody* # 260-263

**TEXTS &  
TREATISES:**

- 8 ARNOLD H. RUTKIN ET AL., *CONNECTICUT PRACTICE: FAMILY LAW AND PRACTICE WITH FORMS* §§ 42.35—42.37 (2000).
- *FAMILY LAW PRACTICE IN CONNECTICUT* 10-17, Law Practice Handbooks, Inc. § 10.36 (1996).
- 3 SANDRA MORGAN LITTLE, *CHILD CUSTODY & VISITATION LAW AND PRACTICE* §§ 16.11[1]—16.11[2] (2004).

**ENCYCLOPEDIAS:**

- Jay M. Zitter, Annotation, *Custodial Parent’s Relocation as Grounds for Change of Custody*, 70 A.L.R. 5<sup>th</sup> 377 (1999).

**LAW REVIEWS:**

- Sarah S. Oldham, *Recent Appellate Decisions*, 12 CONN. FAM. L. 25, (1997) [Discussion of the issues in *Ireland v. Ireland*]
- Kathryn E. Abare, *Protecting the New Family: Ireland v. Ireland and Connecticut’s Custodial Parent Relocation Law*, 32 CONN. L. REV. 307 (1999).
- M. Dee Samuels & Randall Friesen, *E-Visiting and Other Long-Distance Links*, 26 FAMILY ADVOCATE, Spring 2004, at 34.
- Sarah Gottfried, *Virtual Visitation: the Wave of the Future in Communication Between Children and Non-Custodial Parents in Relocation Cases*, 36 FAM. L. QUART. 475 (2002).
- Charles P. Kindregan, *Family Interests in Competition: Relocation and Visitation*, 36 SUFFOLK UNIV. L. REV. 31 (2002).
- Marion Gindes, *The Psychological Effects of Relocation for Children of*

*Divorce*, 5 J. AM. ACAD. OF MATRIMONIAL LAWS. 119 (1998).

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**Table 9 Sibling Visitation in Connecticut**

<b>Legislation</b>	<p><b>2003 Conn. Acts 243 (Reg. Sess.) “An Act Concerning Interstate Placement of Children and Visitation for Children in the Care and Custody of the Commissioner of Children and Families...”</b></p> <p>“§. 5 (<i>New</i>) (a) The Commissioner of Children and Families shall ensure that a child placed in the care and custody of the commissioner pursuant to an order of temporary custody or an order of commitment is provided visitation with such child’s parents and siblings, unless otherwise ordered by the court...</p> <p>(c) If such child has an existing relationship with a sibling and is separated from such sibling as a result of intervention by the commissioner including, but not limited to, placement in a foster home or in the home of a relative, the commissioner shall, based upon consideration of the best interests of the child, ensure that such child has access to and visitation rights with such sibling throughout the duration of such placement. In determining the number, frequency and duration of such visits, the commissioner shall consider the best interests of each sibling, given each child’s age and developmental level and the continuation of the sibling relationship...”</p>
<b>Statutes</b>	<b>§ 46b-59 Court may grant right of visitation to any person.</b>
<b>Legislative Reports</b>	SAUL SPIGEL, DEPARTMENT OF CHILDREN AND FAMILIES POLICY ON SIBLINGS, Connecticut General Assembly, Office of Legislative Research Report No. 2000-R-0895 (Sept. 25, 2000).
<b>Caselaw</b>	<p><b><u>Qual v. Quail</u></b>, No. FA 02 0729549-S (Conn. Super. Ct., Hartford, July 25, 2002), 2002 Conn. Super Lexis 2685. “Both parties have filed ... motions for visitation of their youngest sibling. The applications are considered under Connecticut General Statutes §. 46b-59...”</p> <p>This matter is controlled by the Connecticut Supreme Court decision in <u>Roth v. Weston</u>, 259 Conn. 202, 789 A.2d 431 (2002)... In applying those standards to the case at hand, the court reaches the following conclusions:</p> <p>The petitioners did have a relationship approaching a parent to child relationship with their sibling... However, that relationship lasted a relatively brief period, and the intensity and nature of that relationship ended some time ago...Accordingly, the court concludes that the plaintiffs lack standing to bring this action.</p> <p>In addition, an exam of the second jurisdictional requirement reveals that the evidence does not show by clear and convincing evidence that this parent’s dexision regarding visitation is causing, or would cause, the child to suffer real and substantial emotional harm...”</p>
<b>Articles</b>	William Wesley Patton, <i>The Status of Siblings’ Rights: A View Into the New Millennium</i> , 51 DEPAUL L. REV. 1 (2001).

# Chapter 4

## Out of State Child Custody Orders

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*A Guide to Resources in the Law Library*

### **SCOPE:**

Bibliographic resources relating to registration, modification and enforcement of out of state child custody determinations pursuant to the “Uniform Child Custody Jurisdiction and Enforcement Act”.

### **DEFINITIONS:**

- “The purposes of the UCCCJEA are to avoid jurisdictional competition and conflict with courts of other states in matters of child custody; promote cooperation with the courts of other states; discourage continuing controversies over child custody; deter abductions; avoid re-litigation of custody decisions; and to facilitate the enforcement of custody decrees of other states.” *Radlo v. Radlo*, No. FA920044260 (Conn. Super. CT, Putnam, Dec. 2, 2003), 36 Conn. L. Rptr. 136, 2003 Conn. Super. Lexis 3309.
- “**Child custody determination** means a judgment, decree, or other order of a court providing for the legal custody, physical custody or visitation with respect to a child. The term includes a permanent, temporary, initial and modification order. The term does not include an order relating to child support or other monetary obligation of an individual.” (CONN. GEN. STAT. § 46b-115a(3))
- “**Child custody proceeding** means a proceeding in which legal custody, physical custody or visitation with respect to a child is an issue. The term includes a proceeding for dissolution of marriage, divorce, separation, neglect, abuse, dependency, guardianship, paternity, termination of parental rights and protection from domestic violence, in which the issue may appear. The term does not include a proceeding involving juvenile delinquency, contractual emancipation or enforcement under sections 22 to 34, inclusive, of this act.” (CONN. GEN. STAT. §46b-115a(4))
- “**Commencement** means the filing of the first pleading in a proceeding.” (CONN. GEN. STAT. §46b-115a(5))
- “**Home state** means the state in which a child lived with a parent or person acting as a parent for at least six consecutive months immediately before the commencement of a child custody proceeding. In the case of a child less than six months old, the term means the state in which the child lived from birth with any such parent or person acting as a parent...” (CONN. GEN. STAT. §46b-115a(7))
- “**Initial determination** means the first child custody determination concerning a particular child. (CONN. GEN. STAT. §46b-115a(8))
- “**Modification** means a child custody determination that changes, replaces,

supersedes or is otherwise made after a previous determination concerning the same child, whether or not it is made by the court that made the prior custody determination.” (CONN. GEN. STAT. §46b-115a(11))

- “**Physical custody** means the physical care and supervision of a child.” (CONN. GEN. STAT. §46b-115a(14))
- “As used in sections 46b-115u to 46b-115gg of this act, **petitioner** means a person who seeks enforcement of a child custody determination, and **respondent** means a person against whom a proceeding has been commenced for enforcement of a child custody determination.” (CONN. GEN. STAT. §46b-115u)

#### **STATUTES:**

CONN. GEN. STAT. (2003)

- *Uniform Child Custody Jurisdiction and Enforcement Act*, §§ 46b-115—46b-115jj.  
§ 46b-115m Modification of a child custody determination of another state.  
§ 46b-115n Temporary emergency jurisdiction.  
§ 46b-115p Simultaneous proceedings.  
§ 46b-115s Information required by the court.  
§ 46b-115w Registration of child custody determination.  
§§ 46b-115u—46b-115gg *Procedure for enforcement of out of state child custody orders*  
§§ 46b-115hh—46b-115jj Foreign child custody

#### **INTERNATIONAL CONVENTION:**

- The Hague Convention on the Civil Aspects of International Child Abduction, 1980, U.S., 1988, 51 Fed. Reg. 10494 (Mar. 26, 1986), reprinted in MARTINDALE-HUBBELL INTERNATIONAL LAW DIGEST, part VI, IC-44. Available online at <http://www.divorcenet.com/hague.html>  
“The objects of the present convention are—  
a. to secure the prompt return of children wrongfully removed to or retained in any Contracting State; and  
b. to ensure that rights of custody and of access under the law of one Contracting State are effectively respected in the other Contracting State.

#### **CASES:**

- Radlo v. Radlo, No. FA920044260 (Conn. Super. CT, Putnam, Dec. 2, 2003), 36 Conn. L. Rptr. 136, 2003 Conn. Super. Lexis 3309. “The purposes of the UCCCJEA are to avoid jurisdictional competition and conflict with courts of other states in matters of child custody; promote cooperation with the courts of other states; discourage continuing controversies over child custody; deter abductions; avoid re-litigation of custody decisions; and to facilitate the enforcement of custody decrees of other states.”
- Gilman v. Gilman, Docket No. 0121957S (Norwich Super. CT, May 22, 2001), 2001 WL 688610, 2001 Conn. Super. Lexis 1453. “The UCCJEA alters the analysis of the initial determination of child custody. Specifically, the new act requires that the ‘home state’ determination be made as a condition precedent to an examination as to whether the child and parent have significant connections with this state. The new act also eliminates that analysis on the basis of ‘the best interest of the child.’”

#### **WEST KEY NUMBERS:**

- *Child Custody* # 700-789 Interstate issues
- *Child Custody* # 800-830 International issues

#### **ENCYCLOPEDIAS:**

- David Carl Minneman, Annotation, *Construction and Operation of*



- Uniform Child Custody Jurisdiction and Enforcement Act*, 100 A.L.R. 5<sup>th</sup> 1 (2002).
- David Carl Minneman, Annotation, *Home State Jurisdiction of Court to Modify Foreign Child Custody Decree Under §§ 3(a)(1) and 14(a)(2) of Uniform Child Custody Jurisdiction Act (UCCJA) and Parental Kidnapping Prevention Act (PKPA)*, 28 U.S.C.A. §§ 1738A(c)(A) and 1738A(f)(1), 72 A.L.R. 5<sup>th</sup> 249 (1999).
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  - 1 SANDRA MORGAN LITTLE, *CHILD CUSTODY & VISITATION LAW AND PRACTICE* Ch. 3 (2004).
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  - Mitchell A. Jacobs and David L. Marcus, *The Uniform Child Custody Jurisdiction and Enforcement Act*, 18 GP SOLO, Oct.-Nov. 2001, at 48.
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- TEXTS & TREATISES:**
- LAW REVIEWS:**
- COMPILER:** Barbara J. Bradley, Law Librarian, Connecticut Judicial Department, Law Library at Norwich, One Courthouse Square, Norwich, CT 06360. (860) 887-2398. EMAIL: [barbara.bradley@jud.state.ct.us](mailto:barbara.bradley@jud.state.ct.us).

## Table 4 Uniform Child Custody Jurisdiction and Enforcement Act

CONN. GEN. STAT. (2003)

§46b-115a	<b>Definitions:</b> (3) "Child custody determination" means a judgment, decree, or other order of a court providing for the legal custody, physical custody or visitation with respect to a child. The term includes a permanent, temporary, initial and modification order. The term does not include an order relating to child support or other monetary obligation of an individual.
§46b-115c	<b>Application to indian tribes</b>
§46b-115g	<b>Notice to persons outside state; submission to jurisdiction</b>
§46b-115i	<b>Taking testimony in another state</b>
§46b-115j	<b>Cooperation between courts; preservation of records</b>
§46b-115k	<b>Initial child custody jurisdiction</b>
§46b-115l	<b>Jurisdiction</b> ( <i>Exclusive, continuing jurisdiction</i> )
§46b-115m	<b>Modification of out of state child custody determination:</b> (a) Except as otherwise provided in section 46b-115n, a court of this state may not modify a child custody determination made by a court of another state unless a court of this state has jurisdiction to make an initial determination under subdivisions (1) to (4), inclusive, of subsection (a) of section 46b-115k and one of the following occurs: (1) The court of the other state determines that it no longer has exclusive, continuing jurisdiction under a provision substantially similar to section 46b-115l; (2) a court of another state determines that a court of this state would be a more convenient forum under a provision substantially similar to section 46b-115q; or (3) a court of this state or another state determines that the child, the child's parents and any person acting as a parent do not presently reside in the other state.

	<p>(b) Notwithstanding the provisions of this act, a court of this state may modify a child custody determination made by a court of another state if: (1) The child resides in this state with a parent; (2) the child has been, or is under a threat of being, abused or mistreated by a person who resides in the state which would have jurisdiction under the provisions of this act; and (3) the court of this state determines that it is in the child's best interest to modify the child custody determination.</p>
<b>§46b-115n</b>	<p><b>Temporary emergency jurisdiction:</b></p> <p>(a) A court of this state has temporary emergency jurisdiction if the child is present in this state and (1) the child has been abandoned, or (2) it is necessary in an emergency to protect the child because the child, a sibling or a parent has been, or is under a threat of being, abused or mistreated. As used in this subsection with respect to a child, "abused" shall have the same meaning as in section 46b-120 of the general statutes.</p>
<b>§46b-115o</b>	<p><b>Notice and opportunity to be heard and the right to intervene:</b></p> <p>(c) The obligation to join a party and the right to intervene as a party in a child custody proceeding under this act are governed by section 46b-57 of the general statutes.</p>
<b>§46b-115p</b>	<p><b>Simultaneous proceedings</b> <i>(The authority of a court in this state to assume jurisdiction when a custody action has been commenced in another state)</i></p>
<b>§46b-115q</b>	<p><b>Inconvenient forum</b></p>
<b>§46b-115r</b>	<p><b>Jurisdiction declined by reason of conduct; assessment of fees and costs</b></p> <p>(a) Except as otherwise provided in section 46b-115n, if a court of this state has jurisdiction under this chapter because a person seeking to invoke its jurisdiction has engaged in unjustifiable conduct, the court shall decline to exercise jurisdiction unless:...</p>
<b>§46b-115s</b>	<p><b>Information required by the court</b> <i>(Affidavit concerning custody)</i></p>
<b>§46b-115w</b>	<p><b>Registration of child custody determination</b></p> <p>“(a) A child custody determination issued by a court of another state may be registered in this state, with or without a simultaneous request for enforcement, by sending to the Superior Court in this state: (1) A letter or other document requesting registration; (2) two copies, including one certified copy, of the determination sought to be registered, and a statement under penalty of perjury that to the best of the knowledge and belief of the petitioner the order has not been modified; and (3) except as otherwise provided in section 46b-115s, the name and address of the petitioner and any parent or person acting as parent who has been awarded custody or visitation in the child custody determination sought to be registered.</p> <p>(b) On receipt of the documents required by subsection (a) of this section, the registering court shall cause the determination to be filed as a foreign judgment, together with one copy of any accompanying documents and information, regardless of their form.</p> <p>(c) Within five days after the registering court's receipt of the documents required by subsection (a) of this section, the petitioner shall notify the persons named pursuant to subdivision (3) of subsection (a) of this section of the registration of the documents by certified mail, return receipt requested at their respective last-known addresses or by personal service, and provide them with an opportunity to contest the registration in accordance with this section. The notice required in this subsection</p>

	<p>shall state that: (1) A registered determination is enforceable as of the date of the registration in the same manner as a determination issued by a court of this state; (2) a hearing to contest the validity of the registered determination must be requested within twenty days after service of notice; and (3) failure to contest the registration will, upon proof of notice, result in confirmation of the child custody determination and preclude further contest of that determination with respect to any matter that could have been asserted.</p> <p>(d) The respondent must request a hearing within twenty days after service of the notice. At that hearing, the court shall confirm the registered order unless the respondent establishes that: (1) The issuing court did not have jurisdiction under a provision substantially similar to section 46b-115k, 46b-115l or 46b-115m; (2) the child custody determination sought to be registered has been vacated, stayed or modified by a court having jurisdiction to do so pursuant to a statute substantially similar to sections 46b-115k to 46b-115m, inclusive; or (3) the respondent was entitled to notice of the proceedings before the court that issued the order for which registration is sought, but such notice was not given in a manner reasonably calculated to give actual notice.</p> <p>(e) If a timely request for a hearing to contest the validity of the registration is not made, the registration is confirmed as a matter of law with respect to those who have received proper notice and all persons served must be notified of the confirmation by the petitioner.</p> <p>(f) Confirmation of a registered order, whether by operation of law or after notice and hearing, precludes further contest of the order with respect to any matter that could have been asserted at the time of registration.”</p>
<b>§46b-115x</b>	<b>Enforcement of child custody determination</b>
<b>§46b-115y</b>	<b>Temporary visitation orders</b>
<b>§46b-115aa</b>	<b>Expedited enforcement of child custody determination</b>
<b>§46b-115dd</b>	<b>Order to take physical custody of child</b>
<b>§§46b-115hh –46b-115jj</b>	<p><b>Foreign child custody</b></p> <p>§ 46b-115d “<b>International application of chapter.</b> For purposes of this chapter, any child custody order of a foreign country shall be treated in the manner provided in section 46b-115hh.”</p> <p>§ 46b-115hh “<b>Definitions.</b> ‘Foreign child custody determination’ means any judgment, decree or other order of a court or tribunal of competent jurisdiction of a foreign state providing for legal custody, physical custody or visitation with respect to a child. The term includes a permanent, temporary, initial and modification order.”</p> <p>§ 46b-115jj “<b>Enforcement of foreign child custody order re return of child under Hague Convention.</b> A court of this state shall enforce a foreign child custody determination or an order of a federal court or another state court for return of a child under The Hague Convention on the Civil Aspects of International Child Abduction made under factual circumstances in substantial conformity with the jurisdictional standards of this act, including reasonable notice and opportunity to be heard to all affected persons, as a child custody determination of another state under sections 46b-115u to 46b-115gg, inclusive, unless such determination was rendered under child custody law which violates fundamental principles of human rights or unless such determination is repugnant to the public policy of this state.”</p>

# Parental Kidnapping

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**International parental kidnapping.** “Whoever removes a child from the United States or retains a child (who has been in the United States) outside the United States with intent to obstruct the lawful exercise of parental rights . . . . 18 USC §1204(a) (2002).

**“Custodial interference in the second degree:** Class A misdemeanor. (a) A person is guilty of custodial interference in the second degree when: (1) Being a relative of a child who is less than sixteen years old and intending to hold such child permanently or for a protracted period and knowing that he has no legal right to do so, he takes or entices such child from his lawful custodian; (2) knowing that he has no legal right to do so, he takes or entices from lawful custody any incompetent person or any person entrusted by authority of law to the custody of another person or institution; or (3) knowing that he has no legal right to do so, he holds, keeps or otherwise refuses to return a child who is less than sixteen years old to such child's lawful custodian after a request by such custodian for the return of such child.” CONN. GEN. STAT. § 53a-98 (2003).

**“Custodial interference in the first degree:** Class D felony. (a) A person is guilty of custodial interference in the first degree when he commits custodial interference in the second degree as provided in section 53a-98: (1) Under circumstances which expose the child or person taken or enticed from lawful custody or the child held after a request by the lawful custodian for his return to a risk that his safety will be endangered or his health materially impaired; or (2) by taking, enticing or detaining the child or person out of this state.” CONN. GEN. STAT. § 53a-97 (2003).

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\* The compiler wishes to acknowledge the contribution to this pathfinder of Steve Mirsky while an intern at the Law Library at Middletown.

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# Hague Convention on the Civil Aspects of International Child Abduction

A Guide to Resources in the Law Library

**SCOPE:**

Bibliographic resources relating to parental child abduction to and from the United States with specific emphasis on Connecticut courts.

**DEFINITIONS:**

- **Article 13:** "Notwithstanding the provisions of the preceding Article, the judicial or administrative authority of the requested State is not bound to order the return of the child if the person, institution or other body which opposes its return establishes that —  
     [Article 13]a the person, institution or other body having the care of the person of the child was not actually exercising the custody rights at the time of removal or retention, or had consented to or subsequently acquiesced in the removal or retention; or  
     [Article 13]b there is a grave risk that his or her return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation.  
     The judicial or administrative authority may also refuse to order the return of the child if it finds that the child objects to being returned and has attained an age and degree of maturity at which it is appropriate to take account of its views.  
     In considering the circumstances referred to in this Article, the judicial and administrative authorities shall take into account the information relating to the social background of the child provided by the Central Authority or other competent authority of the child's habitual residence." [emphasis added].
- **Habitual residence:** "To determine the habitual residence, the court must focus on the child, not the parents, and examine past experience, not future intentions." *Friedrich v. Friedrich*, 983 F2d 1396, 1401 (6<sup>th</sup> Cir. 1993).
- **Best interests of the child:** "The guiding principle in determining custody is the best interest of the child . . . The best interest of the child include the child's interest in sustained growth, development, well-being, and continuity and stability of its environment." *Schult v. Schult*, 241 Conn. 767, 777, 699 A.2d 134 (1997).
- **Comity.** "judgments of courts of foreign countries are recognized in the United States because of comity due to the courts and judgments of one nation to another. Such recognition is granted to foreign judgments with due regard to international duty and convenience, on the one hand, and to rights

of citizens of the United States and others under the protection of its laws, on the other hand.” *Litvaitis v. Litvaitis*, 162 Conn. 540, 544, 295 A.2d 519 (1972).

#### **STATUTES:**

- HAGUE CONVENTION ON THE CIVIL ASPECTS OF INTERNATIONAL CHILD ABDUCTION, 51 Fed. Reg. 10494 (March 26, 1986). [*Reprinted in Turner v. Frowein*, 253 Conn. 312, 351, 752 A.2d 955 (2000)].
- INTERNATIONAL CHILD ABDUCTION REMEDIES ACT, P.L.100-300, 42 USC §§11601-11610. [*Reprinted in Appendix 32A of SANDRA MORGAN LITTLE, CHILD CUSTODY AND VISITATION (2002).*]
- CONN. GEN. STAT. § 46b-115jj (2001). "A court of this state shall enforce a foreign child custody determination or an order of a federal court or another state court for return of a child under The Hague Convention on the Civil Aspects of International Child Abduction made under factual circumstances in substantial conformity with the jurisdictional standards of this chapter, including reasonable notice and opportunity to be heard to all affected persons, as a child custody determination of another state under sections 46b-115u to 46b-115gg, inclusive, unless such determination was rendered under child custody law which violates fundamental principles of human rights or unless such determination is repugnant to the public policy of this state."

#### **LEGISLATIVE:**

- 1988 U.S.C.C.A.N. vol. 4 pp. 386-403  
Excerpts from H. Report # 100-525 including “section-by section analysis of the Committee amendment in the nature of a substitute”

#### **REGULATIONS:**

- International Child Abduction, 22 C.F.R. §§ 94.1 - 94.8 (rev. 4/1/03).  
§ 94.6 Procedures for children abducted to the United States  
§ 94.7 Procedures for children abducted from the United States

#### **COURT CASES:**

- *Turner v. Frowein*, 253 Conn. 312, 351, 752 A.2d 955 (2000). “We emphasize that we do not disturb or modify the trial court’s finding that returning the child to the defendant would expose him to a ‘grave’ risk of harm, within the meaning of article 13b. Thus, if the trial court remains unable to find any reasonable means of repatriation that would not effectively place the child in the defendant’s immediate custody, either expressly or de facto, it should deny the petition under the Hague Convention.”
- *Blondin v. Dubois*, 189 F.3d 240, 249 (2d Cir. 1999). “Under the circumstances presented, we think it appropriate to remand this matter to the District Court for further consideration of the range of remedies that might allow *both* the return of the children to their home country *and* their protection from harm, pending a custody award in due course by a French court with proper jurisdiction.”

#### **Unreported Connecticut Decisions**

- *Cruz v. Cruz*, No. CV 00-0341008-S, (Superior Court, Danbury, Dec. 27, 2002), 33 Conn. L Rptr. 594 at 595, 2002 Conn. Super. LEXIS 4195, 2002 WL 31955020. “The issue presented in a Hague Convention case for return of a minor child are:
  1. Has there been a wrongful removal or retention
  2. Is the child under the age of 18 years
  3. Has the child been removed or retained from his or her habitual residence
  4. Was the removal or wrongful retention of the child committed in violation of the ‘custody rights’ of the ‘left behind’ parent.

The Court's analysis of this case has been limited to determining whether the minor child has been removed or retained from his 'habitual residence' in violation of the custody rights of the 'left behind' parent."

- Renovales v. Roosa, No. FA91-0392232 (Sep. 27, 1991), 1991 Conn. Super. LEXIS 2215, 1991 WL 204483 (Sep. 27, 1991). "The court finds that the respondent has failed to prove by 'clear and convincing' evidence that the children will be 'exposed' to grave risk of either physical or psychological harm or that they will be placed in an intolerable situation."
- Harliwich v. Harliwich, No. FA 98-68306 S, 1998 Conn. Super. LEXIS 3401, 1998 WL 867328 (Dec. 3, 1998). "There was no substantial evidence that the child's return would expose him to physical or psychological harm or otherwise place him in an intolerable situation."

#### **From Other Jurisdictions**

- Ohlander v. Larson, 114 F.3d 1531, 1534 (10<sup>th</sup> Cir. 1997). "The Convention is meant to provide for a child's prompt return once it has been established the child has been 'wrongfully removed' to or retained in any affiliated state."
- Friedrich v. Friedrich, 78 F3d 1060, 1067 (6<sup>th</sup> Cir. 1996). "Once a plaintiff establishes that removal was wrongful, the child must be returned unless defendant can establish one of four defenses."
- Mohsen v. Mohsen, 715 F. Supp. 1063, 1065 (D.Wyo. 1989). "In light of the fact the petitioner's daughter was last habitually resident in Bahrain, a noncontracting state, the court concludes that the petitioner has no rights under the Convention and is therefore not entitled to seek redress under its remedial provisions."
- Com. ex rel. Zaubi v. Zaubi, 423 A.2d 333, 335-336 (Pa.1980). "Thus, the courts below were correct in their determination that a showing of 'physical or emotionally harmful' conditions in the custodial household was a necessary prerequisite to the exercise by the Greene County court of its jurisdiction to modify the Danish decree."

#### **WEST KEY NUMBERS:**

- *Parent and Child* #2(1). Custody and control of child. Nature and extent in general.
- *Parent and Child* #18. Enticing away Child
- *Kidnapping* #3. Person liable
- *Treaties* #8. Construction and operation of particular provisions

#### **DIGESTS:**

- ALR DIGEST: *Kidnapping*
- ALR INDEX: *Abduction and Kidnapping*
- CONNECTICUT FAMILY LAW CITATIONS: *Child Abduction*

#### **ENCYCLOPEDIAS**

- 1 AM. JUR. 2d *Abduction and Kidnapping* (1994).  
Abduction or kidnapping by parent or person in loco parentis  
§ 34. Generally
- 59 AM. JUR. 2d *Parent and Child* (2002).  
§ 123. Enticement or abduction of child; interference with custody
- 67A C.J.S. *Parent and Child* (1978).  
§32. Jurisdiction and venue  
§178. Other offenses
- 51 C.J.S. *Kidnapping* (1967).  
§3. Persons liable; defenses  
§4. —Kidnapping by parents, custodians, or their agent
- 5 C.O.A. 799 *Cause of action against noncustodial parent for interference*



*with custody rights to child* (1983).

- Scott M. Smith, Annotation, *Construction And Application Of International Child Abduction Remedies Act* (42 USCS §§ 11601 et seq.), 125 ALR Fed 217 (1995).

**TREATISES:**

- SANDRA MORGAN LITTLE, CHILD CUSTODY AND VISITATION (2002).  
Chapter 32 *International Enforcement of Child Custody*  
§32.02. Hague Convention on the Civil Aspects of International Child Abduction  
§32.03. International enforcement outside the Hague Convention

**LAW REVIEWS:**

- Patricia M. Hoff et al. *Jurisdiction In Child Custody And Abduction Cases: A Judge's Guide To The UCCJA, PKPA, And The Hague Abduction Convention*, 48 JUVENILE & FAMILY COURT JOURNAL CH1 (185) (1997). [Available at the Norwich Law Library].
- Robert J. Levy, *Memoir Of An Academic Lawyer: Hague Convention Theory Confronts Practice*, 29 FAMILY LAW QUARTERLY 171 (1995). [Available at the Norwich Law Library].
- Linda Silberman, *Hague Convention On International Child Abduction: A Brief Overview And Case Law Analysis*, 28 FAMILY LAW QUARTERLY 9 (1994). [Available at the Norwich Law Library].  
Special Issue on International Family Law.
- Carol S. Bruch, *The Central Authority's Role Under The Hague Child Abduction Convention: A Friend In Deed*, 28 FAMILY LAW QUARTERLY 35 (1994). [Available at the Norwich Law Library].  
Special Issue on International Family Law.
- Raymond R. Norko, *Mandatory Implementation Of The Hague Convention On International Child Abduction: An Open Letter To President William Clinton*, 8 CONNECTICUT JOURNAL OF INTERNATIONAL LAW 575 (1993).

**WEBSITES:**

- <http://www.hiltonhouse.com>
- [http://www.travel.state.gov/children's\\_issues.html](http://www.travel.state.gov/children's_issues.html)  
Maintained by the U.S. Department of State.

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Lawrence Cheeseman, Connecticut Judicial Branch Law Library, One Court Street, Middletown, CT 06457. (860) 343-6560. [EMAIL](#).

## Table 10 Requirements of the Hague Convention

Caro v. Sher, 687 A.2d 354, 356-357 (N.J. Super. Ch. 1996).

1. The nations involved must be signatories to the Convention
2. The children must be “habitual resident(s) in a Contracting State immediately before any breach of custody or access right.” (The Convention, art. 4)
3. The children must be under the age of sixteen. (The Convention, art. 4); and
4. The children’s removal or retention in a country other than their place of habitual residence must have been wrongful, <i>e.g.</i> “it is in breach of rights of custody attributed to a person . . . , either jointly or alone, under the law of the State in which the child was habitually resident immediately before the removal or retention.” (The Convention, art. 3(a)).

## Table 11 Affirmative Defenses to International Parental Kidnapping

18 U.S.C. §1204( c) 1-3	
1.	The defendant acted within the provisions of a valid court order granting the defendant legal custody or visitation rights and that order was obtained pursuant to the Uniform Child Custody Jurisdiction Act and was in effect at the time of the offense;
2.	the defendant was fleeing an incidence or pattern of domestic violence;
3.	the defendant had physical custody of the child pursuant to a court order granting legal custody or visitation rights and failed to return the child as a result of circumstances beyond the defendant’s control, and the defendant notified or made reasonable attempts to notify the other parent or lawful custodian of the child of such circumstances within 24 hours after the visitation period had expired and returned the child as soon as possible.

# Federal Parental Kidnapping Prevention Act (PKPA)

*A Guide to Resources in the Law Library*

**SCOPE:**

Bibliographic resources relating to PKPA as it relates to Connecticut.

**SEE ALSO**

- [§ 1. Hague Convention on Civil Aspects of Child Abduction](#)
- [§ 3. Interstate \(New law\).](#)

**DEFINITIONS:**

- **Purpose:** “deter interstate abductions and other unilateral removals of children undertaken to obtain custody and visitations awards.” P.L. 96-611 § 7(c)(7).
- “Under the PKPA, a court of one state generally must enforce, and may not modify, a child custody determination of another state when the custody determination was made consistent with the provisions of the PKPA.” *Murphy v. Woerner*, 748 P.2d 749, 750 (Alaska 1988).
- **Home state:** “means the State in which, immediately preceding the time involved, the child lived with his parents, a parent, or a person acting as parent, for a least six consecutive months, and in the case of a child less than six months old, the State in which the child lived from birth with any of such persons. Periods of temporary absence of any of such persons are counted as part of the six month or other period.” 28 USC §1738A(b)(4) (1999).

**STATUTES:**

- 28 USC § 1738A (2002), Full faith and credit given to child custody determinations.

**COURT CASES:**

*Connecticut*

- *Brown v. Brown*, 195 Conn. 98, 119-120, 486 A.2d 1116 (1985). “Geared as the PKPA is toward establishing national jurisdictional standards that endeavor to reduce interstate child abductions, the application of the PKPA to this case initially turns on the definition of a “custody determination.” We believe that the orders of the Florida court which, in effect, generated this Connecticut action, fall squarely within the PKPA definition of a ‘custody determination.’” 28 U.S.C. § 1738A (b) (3).

**Unreported Connecticut Decisions**

- *Venditti v. Plonski*, No. FA01 0076354S (Conn. Super. Ct., Milford, Feb. 5, 2002), 2002 WL 241376. “Even though the facts may be unclear as to the defendant's permanent intentions, this court does not need to find that Arizona is in fact the home state of the minor child. Using the significant connections test, it is clear that the child has more tied to Arizona and that

jurisdiction should reside in that state. The plaintiff will have full opportunity to contest custody and to present all evidence necessary for a thoughtful custody and visitation determination in that state. Therefore, the motion to dismiss is granted."

- Rowland v. Rowland, No. FA97 0057152S (Conn. Super. Ct., Milford, Aug. 19, 1999), 1999 WL 669794. "The language of the federal Parental Kidnapping Prevention Act of 1980 (PKPA), 28 U.S.C. § 1738A must now be examined. That act requires the states to give full faith and credit to the custody decisions of other states that are consistent with federal law. The requirement, of course, is mandatory because of the Supremacy Clause of the federal constitution."

#### *Other States*

- Wilson v. Gouse, 441 S.E.2d 57, 59 (Ga. 1994). "As a preliminary matter, we find the PKPA applies in all interstate child custody disputes."
- Murphy v. Woerner, 748 P.2d 749, 750 (Alaska 1988). "To the extent that the PKPA and the UCCJA conflict, the PKPA preempts state law."

#### **WEST KEY NUMBERS:**

- *Parent and Child* #2(1). Custody and control of child. Nature and extent in general.
- *Parent and Child* #18. Enticing away Child
- *Kidnapping* #3. Person liable

#### **ENCYCLOPEDIAS**

- 1 AM. JUR. 2d *Abduction and Kidnapping* (1999).  
Abduction or kidnapping by parent or person in loco parentis  
§34. Generally  
§35. Federal statutes; kidnapping statute  
§36. —Federal Kidnapping Prevention Act
- 59 AM. JUR. 2d *Parent and Child* (2002).  
§ 123. Enticement or abduction of child; interference with custody
- 67A C.J.S. *Parent and Child* (1978).  
§32. Jurisdiction and venue  
§178. Other offenses
- 51 C.J.S. *Kidnapping* (1967).  
§3. Persons liable; defenses  
§4. —Kidnapping by parents, custodians, or their agent
- *Cause of action against noncustodial parent for interference with custody rights to child*, 5 COA 799 (1983).

#### **TEXTS & TREATISES:**

- SANDRA MORGAN LITTLE, *CHILD CUSTODY AND VISITATION LAW & PRACTICE* (2002).  
Chapter 3. Impact of the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA): an overview  
§3.01[3]. Parental Kidnapping Prevention Act  
Chapter 4. Interstate child custody jurisdiction under UCCJA and PKPA  
§4.02[7]. Abductions  
§4.08. Child snatching; parental misconduct

#### **LAW REVIEWS:**

- Patricia M. Hoff et al. *Jurisdiction In Child Custody And Abduction Cases: A Judge's Guide To The UCCJA, PKPA, And The Hague Abduction Convention*, 48 JUVENILE & FAMILY COURT JOURNAL CH1 (185) (1997). [Available at the Norwich Law Library].

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## Section 5.3

# Interstate (New Law)

### A Guide to Resources in the Law Library

#### SCOPE:

Bibliographic resources relating to the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) which was effective in Connecticut on July 1, 2000.

#### SEE ALSO:

- [International](#)
- [Indian child](#)
- [Interstate \(prior law\)](#)

#### DEFINITIONS:

- **Child custody determination:** "means a judgment, decree, or other order of a court providing for the legal custody, physical custody or visitation with respect to a child.  
The term includes a permanent, temporary, initial and modification order. The term **does not include** an order relating to child support or other monetary obligation of an individual;" CONN. GEN. STAT. § 46b-115a(3) (2003). [emphasis added]
- **Home State:** "means the State in which a child lived with a parent or a person acting as a parent for at least six consecutive months immediately before the commencement of a child-custody proceeding. In the case of a child less than six months of age, the term means the State in which the child lived from birth with any of the persons mentioned. A period of temporary absence of any of the mentioned persons is part of the period;" CONN. GEN. STAT. § 46b-115a(7) (2003).
- **Indian Child Welfare Act:** "A child custody proceeding that pertains to an Indian child as defined in the Indian Child Welfare Act, 25 U.S.C. Section 1901 et seq., is not subject to this act to the extent that it is governed by the Indian Child Welfare Act." CONN. GEN. STAT. § 46b-115c (2003).
- **Exclusive, continuing jurisdiction:** CONN. GEN. STAT. § 46b-115l (2003).
- **Jurisdiction to modify determination:** CONN. GEN. STAT. § 46b-115m (2003).
- **Taking testimony in another state.** CONN. GEN. STAT. § 46b-115i (2003).
- **Temporary Emergency Jurisdiction:** CONN. GEN. STAT. § 46b-115n (2003).

#### STATUTES:

##### *Connecticut*

- CONN. GEN. STAT. (2003).  
Chapter 815p. Uniform Child Custody Jurisdiction and Enforcement Act  
§§ 46b-115 et seq.  
Part I. General provisions  
Part II. Jurisdiction  
Part III. Enforcement (see [Table 3](#))  
Part IV. Foreign child custody

##### *Uniform Law*

- 9 Part 1A UNIFORM LAWS ANNOTATED 655 (1999).  
Prefatory Note, pp. 649-654
- SANDRA MORGAN LITTLE, CHILD CUSTODY AND VISITATION (2000).  
Appendix 3-C

#### CASES:

- Lord v. Lord, No. CV01 038 02 79 (Conn. Super. Ct., Fairfield at Bridgeport, Aug. 20, 2002), 33 CONN. L. RPTR. 88, 90 (November 4, 2002), 2002 WL 31125621. "If parties could consent to jurisdiction in any forum, provisions of the UCCJEA itself would be meaningless. General Statutes § 46b-115k provides that 'a court of this state has jurisdiction to make an initial child custody determination if' certain facts are present. Notably, an agreement by the parties that a court shall have subject matter jurisdiction is not one of those factors. General Statutes § 46b-115l provides that 'a court of this state which has made a child custody determination pursuant to sections 46b-115k to 46b-115m, inclusive, has exclusive, continuing jurisdiction over the determination until' certain determinations are made by Connecticut or other state courts. Again, not included in this determination is whether the parties have agreed that a court shall take subject matter jurisdiction."
- Crawford v. Calayag, No. FA01-034 44 98 S (Conn. Super. Ct., Danbury, March 22, 2002) 2002 WL 653241. "Connecticut is not the 'home state' of the minor child as that term is defined by § 46b-115a (7) of the Connecticut General Statutes.

Under the provisions of the UCCJEA, the court has exercised temporary jurisdiction in this matter and has entered the temporary emergency orders recited above in what it found to be the best interests of the minor child and to address the concerns raised by the plaintiff regarding alleged efforts by the defendant to deny the plaintiff access to his minor child."

- Guillory v. Francks, FA 010065736S (Conn. Super. Ct., Windham at Willimantic, February 14, 2002), 2002 WL 442145. "From the record before this court the court concludes that the Florida court continues to exercise jurisdiction in the case . . . This court is convinced, based upon the continuing activity in the Florida court, that Samantha's presence here in Connecticut is due to a temporary custody order in favor of the plaintiff and thus pursuant to § 46b-115(7) Florida remains the home state of Samantha."
- Graham v. Graham, No. FA 92 65185 (Conn. Super. Ct., Middlesex at Middletown, Feb. 6, 2002), 2002 WL 241493. "Under the UCCJEA, jurisdiction largely depends on the status of the involved individuals on the date of the commencement of the proceeding. Jurisdiction attaches at the commencement of a proceeding. C.G.S. § 46b-115a (5)."
- Gilman v. Gilman, No. 0121957S (Conn. Super. Ct., New London at Norwich, May 22, 2001), 2001 WL 688610. "The new act represents a marked difference from what had been Connecticut General Statute § 46b-93. Under the former statute, a court of this state could exercise jurisdiction if this state was the home state of the child at the time the proceeding was commenced or it was in the best interest of the child that the court exercise jurisdiction because the child and his parents had a significant connection to the state. The UCCJEA alters the analysis of the initial determination of child custody. Specifically, the new act requires that the 'home state' determination be made as a condition precedent to an examination as to whether the child and parent have significant connections with this state. The new act also eliminates that analysis on the basis of 'the best interest of the child.'"
- Anselmo v. Anselmo, No. FA000181708 (Conn. Super. Ct., Stamford, March 28, 2001), 2001 WL 358851. ". . . the question becomes on what

basis can this court, or any court for that matter, accept jurisdiction regarding custody of an unborn infant.”

- Heath v. Heath, No. FA91 0117282 S (Conn. Super. Ct., Norwalk at Stamford, Nov. 16, 2000), 2000 WL 1838932. “Jurisdiction is found in Section 13 of the act since this state has made an initial child custody determination and has exclusive, continuing jurisdiction over the determination until (1) neither parent nor the child reside in this state or (2) that this state is not the home state of the child, and that although one parent continues to reside in this state the child no longer has a significant relationship with such parent and that substantial evidence is no longer available in this state concerning the child's care, protection, training and personal relationships. The facts in this case are that the father does reside in this state and no evidence has been introduced to show that he no longer has a significant relationship with the boy. Connecticut has the jurisdiction to act in the matter.”

## **ENCYCLOPEDIAS**

- 1 AM. JUR. 2d *Abduction and Kidnapping* (1994).  
Abduction or kidnapping by parent or person in loco parentis  
§ 34. Generally  
§ 35. Federal statutes; kidnapping statute  
§ 36. —Federal Kidnapping Prevention Act  
§ 37. Uniform Child Custody Jurisdiction Act
- 51 C.J.S. *Kidnapping* (1967).  
§ 3. Persons liable; defenses  
§ 4. —Kidnapping by parents, custodians, or their agent
- 59 AM. JUR. 2d *Parent and Child* (2002).  
§ 123. Enticement or abduction of child; interference with custody
- 67A C.J.S. *Parent and Child* (1978).  
§ 130. Action by parent for enticing away child or other interference with relationship  
§ 131. — Nature and elements of cause of action  
§ 132. — Form of action and proper parent to sue  
§ 133. — Defenses  
§ 134. — Pleading and evidence  
§ 135. — Trial and recovery for damages
- David Carl Minneman, Annotation, *Construction And Operation Of Uniform Child Custody Jurisdiction And Enforcement Act*, 100 ALR5th 1 (2002).
- William B. Johnson, Annotation, *Liability Of Legal Or Natural Parent, Or One Who Aids And Abets, For Damages Resulting From Abduction Of Own Child*, 49 ALR4th 7 (1986).
- William B. Johnson, Annotation, *Kidnapping Or Related Offense By Taking Or Removing Child By Or Under Authority Of Parent Or One In Loco Parentis*, 20 ALR 4th 823 (1983).

## **TEXTS & TREATISES:**

- SANDRA MORGAN LITTLE, *CHILD CUSTODY AND VISITATION* (2002).  
Chapter 3 Impact of the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA): An Overview  
§ 3.01[2]. Evolutionary developments—UCCJEA  
§3.01[4][b]. Interstate overview—UCCJEA  
§3.01[6][b]. Applicability—UCCJEA  
§3.02[2]. Objectives—UCCJEA  
§3.02A[2]. Jurisdiction to decide this dispute—UCCJEA  
§3.02B[2]. Enforcement provisions in UCCJEA  
[b]. Duty to enforce foreign-state orders



[c]. Enforcement under Hague Convention  
§3.02C. Extraordinary enforcement under UCCJEA; warrant for  
physical custody—UCCJEA  
§3.04[2]. Due process requirements—UCCJEA  
§3.05[2]. Pleadings and testimony—UCCJEA  
§3.06[2]. Joinder of additional parties; appearances—UCCJEA  
§3.07[2]. Cooperation between courts—UCCJEA

**LAW REVIEWS:**

- Patricia M. Hoff, *The ABC's Of The UCCJEA: Interstate Custody Practice Under The New Act*, 32 FAM. L.Q. 267 (1998). [Available at the Norwich Law Library].

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**Table 12 Enforcement under UCCJEA**

<b>Enforcement under UCCJEA</b> <small>CONN. GEN. STAT. (2003)</small>	
§ 46b-115gg	Appeals
§ 46b-115ee	Costs, fees and expenses
§ 46b-115x	Enforcement of child custody determinations
§ 46b-115v	Enforcement under Hague Convention
§ 46b-115aa	Expedited enforcement of child custody determination
§ 46b-115cc	Hearing and order
§ 46b-115dd	Order to take physical custody of child
§ 46b-115ff	Recognition and enforcement of order issued by another state
§ 46b-115w	Registration of child-custody determination
§ 46b-115bb	Service of petition and order
§ 46b-115y	Temporary visitation order

## Section 5.3a

# Interstate

(Prior to July 1, 2000)

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### A Guide to Resources in the Law Library

- SCOPE:** Bibliographic resources relating to the Connecticut Uniform Child Custody Jurisdiction Act (UCCJA) which was repealed eff. July 1, 2000.
- SEE ALSO:**
- [Current law](#)
- DEFINITIONS:**
- HOME STATE: “means the state in which the child immediately preceding the time involved lived with his parents, a parent, or a person acting as parent, for at least six consecutive months, and in the case of a child less than six months old, the state in which the child lived from birth with any of such persons. periods of temporary absence of any of the named persons are counted as part of the six-month or other period;” CONN. GEN. STATS. §46B-92(6) (1999).
- STATUTES:**
- CONN. GEN. STATS. §§ 46b-90 to 46b-114 (1999). Uniform Child Custody Jurisdiction Act. [repealed effective July 1, 2000].
- COURT CASES:**
- Muller v. Muller, 43 Conn. App. 327, 333, 682 A.2d 1089 (1996). “Here, of course, there is no such danger [parental resort to kidnapping to gain a more favorable judgment in a new forum] because the plaintiff has lived in California with the minor child since giving birth to him nearly seven years ago. The child has never lived in Connecticut.”
  - Grynkewich v. McGinley, 3 Conn. App. 541, 545-546, 490 A.2d 534 (1985). “In order to bring about a measure of interstate stability in custody awards, the UCCJA ‘limits custody jurisdiction to the state where the child has his home or where there are other strong contacts with the child and his family.’ Unif. Child Custody Jurisdiction Act, Commissioners’ Prefatory Note, 9 U.L.A. 114(1979).”
  - Goldstein v. Fischer, 200 Conn. 197, 201, 510 A.2d 184 (1986). “General Statutes § 46b-93(a)(1) is inapplicable because this state is not and never has been the ‘home state’ of the child . . . . The child in this case was less than five months old when she left Connecticut, and because she was born in West Germany.”
- ENCYCLOPEDIAS**
- 1 AM. JUR. 2d *Abduction and Kidnapping* (1994).  
Abduction or kidnapping by parent or person in loco parentis  
§34. Generally  
§35. Federal statutes; kidnapping statute

- §36. —Federal Kidnapping Prevention Act
- §37. Uniform Child Custody Jurisdiction Act
- 51 C.J.S. *Kidnapping* (1967).
  - §3. Persons liable; defenses
  - §4. —Kidnapping by parents, custodians, or their agent
- 59 AM. JUR. 2d *Parent and Child* (1987).
  - § 93. Enticement or abduction of child; interference with custody
- 67A C.J.S. *Parent and Child* (1978).
  - § 130. Action by parent for enticing away child or other interference with relationship
  - § 131. — Nature and elements of cause of action
  - § 132. — Form of action and proper parent to sue
  - § 133. — Defenses
  - § 134. — Pleading and evidence
  - § 135. — Trial and recovery for damages
- David Carl Minneman, Annotation, *Significant Connection Jurisdiction Of Court To Modify Foreign Child Custody Decree Under §§ 3(a)(2) And 14(b) Of The Uniform Child Custody Jurisdiction Act (UCCJA) And The Parental Kidnapping Prevention Act (PKPA)*, 28 USC §§ 1738A(c)(2)(b) And 1738A(f)(1), 67 ALR5th 1 (1999).
- Annotation, *Pending Proceeding In Another State As Ground For Declining Jurisdiction Under §7 Of The Uniform Child Custody Jurisdiction Act (UCCJA)*, 20 ALR 5th 700 (1994).
- David Carl Minneman, Annotation, *Parties' Misconduct As Ground For Declining Jurisdiction Under § 8 Of The Uniform Child Custody Jurisdiction Act (UCCJA)*, 16 ALR 5th 650 (1993).
- David Carl Minneman, Annotation, *Home State Jurisdiction Of Court Under § 3(a)(1) Of The Uniform Child Custody Jurisdiction Act (UCCJA) Or The Parental Kidnapping Prevention Act (PKPA)*, 28 USC § 1738A(c)(2)(A), 6 ALR 5th 1 (1992).
- David Carl Minneman, Annotation, *Significant Connection Jurisdiction Of Court Under § 3(A)(2) Of The Uniform Child Custody Jurisdiction Act (UCCJA) Or The Parental Kidnapping Prevention Act (PKPA)*, 28 USC § 1738A(C)(2)(D), 5 ALR5th 550 (1992).
- David Carl Minneman, Annotation, *Abandonment And Emergency Jurisdiction Of Court Under § 3(A)(3) Of The Uniform Child Custody Jurisdiction Act(UCCJA) Or Parental Kidnapping Prevention Act (PKPA)*, 28 USC § 1738A(C)(2)(C), 5 ALR5th 788 (1992).
- David Carl Minneman, Annotation, *Default Jurisdiction Of Court Under § 3(A)(4) Of The Uniform Child Custody Jurisdiction Act (UCCJA) Or The Parental Kidnapping Prevention Act (PKPA)*, 28 USC § 1738A(C)(2)(D), 6 ALR 5th 69 (1992).
- Annotation, *Child Custody: When Does State That Issued Previous Custody Determination Have Continuing Jurisdiction Under Uniform Child Custody Jurisdiction Act (UCCJA) Or Parental Kidnapping Prevention Act (PKPA)*, 28 USC § 1738A, 83 ALR 4th 742 (1991).
- Danny R. Veilleux, Annotation, *Applicability Of Uniform Child Custody Act (UCCJA) To Temporary Custody Orders*, 81 ALR4th 1101 (1990).
- Danny R. Veilleux, Annotation, *What Types Of Proceedings Or Determinations Are Governed By The Uniform Child Custody Jurisdiction Act (UCCJA) Or The Parental Kidnapping Prevention Act (PKPA)*, 78 ALR4th 1028 (1990).
- William B. Johnson, Annotation, *Liability Of Legal Or Natural Parent, Or One Who Aids And Abets, For Damages Resulting From Abduction Of Own*

*Child*, 49 ALR4th 7 (1986).

- William B. Johnson, Annotation, *Kidnapping Or Related Offense By Taking Or Removing Child By Or Under Authority Of Parent Or One In Loco Parentis*, 20 ALR 4th 823 (1983).

**TEXTS &  
TREATISES:**

- SANDRA MORGAN LITTLE, *CHILD CUSTODY AND VISITATION* (2002).  
Chapter 4. Interstate child custody jurisdiction under UCCJA and PKPA  
§ 4.08 Child Snatching: parental misconduct  
Chapter 5. Recognition, enforcement and modification under UCCJA and  
PKPA: comity and full faith and credit  
§ 5.07 Tort Remedy for Child Snatching

**JOURNALS:**

- Patricia M. Hoff et al. *Jurisdiction In Child Custody And Abduction Cases: A Judge's Guide To The UCCJA, PKPA, And The Hague Abduction Convention*, 48 JUVENILE & FAMILY COURT JOURNAL CH1 (185) (1997).  
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# Within Connecticut

## A Guide to Resources in the Law Library

### **SCOPE:**

Bibliographic resources relating to the civil and criminal aspects of parental child abduction within the State of Connecticut after July 1, 2000.

### **DEFINITIONS:**

- **Conspiracy to interfere with custodial relations:** "The requisites of a civil action for conspiracy are: (1) a combination between two or more persons, (2) to do a criminal or an unlawful act or a lawful act by criminal or unlawful means, (3) an act done by one or more of the conspirators pursuant to the scheme and in furtherance of the object, (4) which act results in damage to the plaintiff." Williams v. Maislen, 116 Conn. 433, 437, 165 A. 455 (1933).
- **"Custodial interference in the first degree:** Class D felony. (a) A person is guilty of custodial interference in the first degree when he commits custodial interference in the second degree as provided in section 53a-98: (1) Under circumstances which expose the child or person taken or enticed from lawful custody or the child held after a request by the lawful custodian for his return to a risk that his safety will be endangered or his health materially impaired; or (2) by taking, enticing or detaining the child or person out of this state." CONN. GEN. STAT. § 53a-97 (2003).
- **"Custodial interference in the second degree:** Class A misdemeanor. (a) A person is guilty of custodial interference in the second degree when: (1) Being a relative of a child who is less than sixteen years old and intending to hold such child permanently or for a protracted period and knowing that he has no legal right to do so, he takes or entices such child from his lawful custodian; (2) knowing that he has no legal right to do so, he takes or entices from lawful custody any incompetent person or any person entrusted by authority of law to the custody of another person or institution; or (3) knowing that he has no legal right to do so, he holds, keeps or otherwise refuses to return a child who is less than sixteen years old to such child's lawful custodian after a request by such custodian for the return of such child." CONN. GEN. STAT. § 53a-98 (2003).
- **Effects of Joint Custody:** "We were wrong to conclude that a joint custodian could never, under any scenario, be liable for custodial interference." State v. Vakilzaden, 251 Conn. 656, 664, 742 A.2d 767 (1999).

### **STATUTES:**

- CONN. GEN. STAT. (2003)
  - § 53a-97. Custodial interference in the first degree
  - § 53a-98. Custodial interference in the second degree

### **LEGISLATIVE:**

- George Coppolo, *Custodial interference*, Connecticut General Assembly. Office of Legislative Research Report No. 98-R-1142 (February 4, 1998).  
<http://www.cga.state.ct.us/ps98/rpt/olr/98-r-0192.doc>

## COURT CASES:

- Streeter v. Bruderhof Communities in New York, Inc., No. X01 CV-02-0179481-S (Conn. Super. Ct., Waterbury, Complex Litigation, Nov. 3, 2003), 36 CONN. L. RPTR. 69 (January 12, 2004).

“This action concerns the claimed abduction of the plaintiff’s two (2) minor children by the children’s father, the plaintiff’s ex-husband. The claim is that he, with the assistance of the other named defendants, removed the children from the United States to Egypt via Ireland. The other named defendants are the owner and/or carrier for the international flight, a global aviation and manufacturing business, and a private airline charter service. The mother and the father share joint legal custody; the plaintiff mother has physical custody.

The complaint asserts four (4) causes of action: 1) Interference with Custodial Relations; 2) Negligence; 3) False Imprisonment; and 4) Emotional Distress.”
- State v. Vakilzaden, 251 Conn. 656, 742 A.2d 767 (1999). “. . . a joint custodian is not inherently immune from criminal prosecution based solely on his or her status as joint custodian if the state can prove all elements of the custodial interference statute, including both knowledge and intent beyond a reasonable doubt.”
- Zamstein v. Marvasti, 240 Conn. 549, 566, 692 A.2d 781 (1997). “The plaintiff in the present case has failed to allege sufficient facts to state a cause of action for the tort of child abduction or custodial interference, as defined in Marshak v. Marshak, [below] . . . because the plaintiff did not allege any facts suggesting an unlawful custody of his children.”
- Marshak v. Marshak, 226 Conn. 652, 665-666, 628 A.2d 964 (1993). “We disagree with the trial court’s conclusion, however, that, under the circumstances of this case, the defendant was liable for such a tort. In order to impose liability on a third party for conspiring with or aiding another in the removal of children from the custodial parent, the third party must have conspired with, or aided the other, ‘to do a criminal or an unlawful act or a lawful act by criminal or unlawful means’ . . . In this case, however, civil liability was predicated on acts that were not themselves unlawful when they occurred because on August 7, 1985, the date on which the defendant drove the children and their father to New York, the father still had joint legal custody of the children.”
- Brown v. Brown, 195 Conn. 98, 119-120, 486 A.2d 1116 (1985). “Geared as the PKPA is toward establishing national jurisdictional standards that endeavor to reduce interstate child abductions, the application of the PKPA to this case initially turns on the definition of a ‘custody determination.’ We believe that the orders of the Florida court which, in effect, generated this Connecticut action, fall squarely within the PKPA definition of a ‘custody determination.’” 28 U.S.C. § 1738A (b) (3)
- Agnello v. Becker, 184 Conn. 421, 432-433, 440 A.2d 172 (1981). “The defendant also claims that the ‘reprehensible conduct’ of the plaintiff, in taking the child from the home of the defendant and allegedly ‘concealing’ her from the defendant, supports the trial court’s conclusion that the New Jersey decree should not be recognized . . . We initially note that this provision [Conn. Gen. Stats. §46b-98(a) and N.J. Stat. Ann. §2A:34-36(a)] does not set forth any new bases for jurisdiction. Secondly, under this section, the determination of whether the plaintiff’s conduct was reprehensible was more properly a question for the New Jersey court. Thirdly, we point out that the act does not *require* a state to decline to exercise its jurisdiction over the matter for such conduct.”

**WEST KEY  
NUMBERS:**

- *Infants* #18. Custody and protection. Jurisdiction of the court
- *Parent and Child* #2(5). Custody and control of child. Proceedings to determine right. Jurisdiction; venue

**DIGESTS:**

- CONNECTICUT FAMILY LAW CITATIONS: *Child Abduction*

**ENCYCLOPEDIAS**

- 1 AM. JUR. 2d *Abduction and Kidnapping* (1994).  
Abduction or kidnapping by parent or person in loco parentis  
§34. Generally
- 51 C.J.S. *Kidnapping* (1967).  
§3. Persons liable; defenses  
§4. —Kidnapping by parents, custodians, or their agent
- 59 AM. JUR. 2d *Parent and Child* (1987).  
§ 93. Enticement or abduction of child; interference with custody
- 67A C.J.S. *Parent and Child* (1978).  
§ 130. Action by parent for enticing away child or other interference with relationship  
§ 131. — Nature and elements of cause of action  
§ 132. — Form of action and proper parent to sue  
§ 133. — Defenses  
§ 134. — Pleading and evidence  
§ 135. — Trial and recovery for damages
- William B. Johnson, Annotation, *Liability Of Legal Or Natural Parent, Or One Who Aids And Abets, For Damages Resulting From Abduction Of Own Child*, 49 ALR4th 7 (1986).
- William B. Johnson, Annotation, *Kidnapping Or Related Offense By Taking Or Removing Child By Or Under Authority Of Parent Or One In Loco Parentis*, 20 ALR 4th 823 (1983).

**TEXTS &  
TREATISES:**

- DANIEL C. POPE, CONNECTICUT ACTIONS AND REMEDIES: TORT LAW 2 (1996).  
Chapter 40. Conspiracy
- AMERICAN LAW INSTITUTE, RESTATEMENT OF THE LAW OF TORTS 2D (1977).  
§ 700. Causing minor child to leave home or not return to home

**LAW REVIEWS:**

- Patricia M. Hoff et al. *Jurisdiction In Child Custody And Abduction Cases: A Judge's Guide To The UCCJA, PKPA, And The Hague Abduction Convention*, 48 JUVENILE & FAMILY COURT JOURNAL CH1 (185) (1997).  
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**Table 13 Tort of child abduction or custodial interference**

<h2 style="text-align: center;">Tort of Child Abduction or Custodial Interference</h2>	
<p><u>Bouchard v. Sundberg</u>, 80 Conn. App. 180, 198-199, 834 A.2d 744 (2003).</p>	<p>In <i>Vakilzaden</i> [infra], the Supreme Court considered for the first time whether the tort of child abduction or custodial interference applied to a parent who had joint custody of the subject child . . . . That case did not, as the plaintiff argues, abrogate the requirement of an extralegal taking of custody for the tort of custodial interference. The Supreme Court expressly decided that a parent enjoying joint custody could be liable for the crime of custodial interference and, in that respect, overruled <i>Marshak</i> [infra].”</p>
<p><u>State v. Vakilzaden</u>, 251 Conn. 656, 662-663, 742 A.2d 767 (1999).</p>	<p>“The state argues that we should overrule <i>Marshak</i> [infra] and allow joint custodians to be held criminally liable if, in abducting their own child, their intent is to deprive the other joint custodian of his or her equal parental rights permanently or for a protracted period of time in accordance with General Statutes § 53a-98. We agree that <i>Marshak</i> should be overruled and that a joint custodian is not inherently immune from criminal prosecution based solely on his or her status as joint custodian if the state can prove all elements of the custodial interference statute, including both knowledge and intent, beyond a reasonable doubt.”</p>
<p><u>Zamstein v. Marvasti</u>, 240 Conn. 549, 565, 692 A.2d 781 (1997)</p>	<p>“Although we have recognized that the <b>tort of child abduction or custodial interference</b> may have a place in our jurisprudence; see <i>Marshak v. Marshak</i>, 226 Conn. 652, 665, 628 A.2d 964 (1993); we conclude that the plaintiff has failed to allege sufficient facts to state such a cause of action.” (emphasis added)</p>
<p><u>Marshak v. Marshak</u>, 226 Conn. 652, 665, 628 A.2d 964 (1993).</p>	<p>We agree with the trial court that the recognition of <b>the tort of child abduction or custodial interference</b>, as applied to either a parent or a third party, might well play an important role in encouraging the speedy return of abducted children to the custodial parent and in compensating that parent for the harm suffered from the child's absence. We also agree that such a tort may have a place in our jurisprudence. We disagree with the trial court's conclusion, however, that, under the circumstances of this case, the defendant was liable for such a tort.” (Emphasis added).</p>
<p>Restatements</p>	<p>RESTATEMENT(SECOND) OF TORTS § 700 (1989). Causing minor child to leave or not return home.</p>

# Indian Child Welfare Act (ICWA)

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## A Guide to Resources in the Law Library

### SCOPE:

Bibliographic resources relating to the federal Indian Child Welfare Act (ICWA) and parental kidnapping of an Indian child.

### DEFINITIONS:

- **Indian child:** "means any unmarried person who is under age eighteen and is either (a) a member of an Indian tribe or (b) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe." 25 U.S.C. §1903(4) (2002).
- **Indian tribe:** "means any Indian tribe, band, nation or other organized group or community of Indians recognized as eligible for the services provided to Indians by the Secretary because of their status as Indians . . . ." 25 U.S.C. §1903(8)(2002).
- **Exclusive jurisdiction:** "An Indian tribe shall have jurisdiction exclusive as to any State over any child custody proceeding involving an Indian child who resides or is domiciled within the reservation of such tribe, except where such jurisdiction is otherwise vested in the State by existing Federal law. Where an Indian child is a ward of a tribal court, the Indian tribe shall retain exclusive jurisdiction, notwithstanding the residence or domicile of the child." 25 U.S.C. §1911 (2002).

### STATUTES:

- Indian Child Welfare Act, 25 U.S.C. §§ 1901 et seq. (2002).
  - § 1920. "Where any petitioner in an Indian child custody proceeding before a State court has improperly removed the child from custody of the parent or Indian custodian or has improperly retained custody after a visit or other temporary relinquishment of custody, the court shall decline jurisdiction over such petition and shall forthwith return the child to his parent or Indian custodian unless returning the child to his parent or custodian would subject the child to a substantial and immediate danger or threat of such danger."
  - § 1921. In any case where State or Federal law applicable to a child custody proceeding under State or Federal law provides a higher standard of protection to the rights the parent or Indian custodian of an Indian child than the rights provided under this title, the State or Federal Court shall apply the State or Federal standard.
  - §1922. Nothing in this title shall be construed to prevent the emergency removal of an Indian child who is a resident of or is

domiciled on a reservation, but temporarily located off the reservation, from his parent or Indian custodian or the emergency placement of such child in a foster home or institution, under applicable State law, in order to prevent immediate physical damage or harm to the child. The State authority, official, or agency involved shall insure that the emergency removal or placement terminates immediately when such removal or placement is no longer necessary to prevent imminent physical damage or harm to the child and shall expeditiously initiate a child custody proceeding subject to the provisions of this title, transfer the child to the jurisdiction of the appropriate Indian tribe, or to restore the child to the parent or Indian custodian, as may be appropriate.

- CONN. GEN. STAT. § 46b-115c (2003). "A child custody proceeding that pertains to an Indian child as defined in the Indian Child Welfare Act, 25 U.S.C. § 1901 et seq., is not subject to this chapter to the extent that it is governed by the Indian Child Welfare Act."

**LEGISLATIVE HISTORY:**

- H.R.Rep. No. 1386, 95<sup>th</sup> Cong., 2d Sess. 25 (1978). Reprinted in 1978 U.S.C.C.A.N. 7530, 7548.  
"Section 110 [25 U.S.C. §1920] establishes a 'clean hands' doctrine with respect to petitions in State courts for the custody of an Indian child by a person who improperly has such child in physical custody. It is aimed at those persons who improperly secure or improperly retain custody of the child without the consent of the parent or Indian custodian and without the sanction of law. It is intended to bar such person from taking advantage of their wrongful conduct in a subsequent petition for custody. The child is to be returned to the parent or Indian custodian by the court unless such return would result in substantial and immediate physical damage or threat of physical danger to the child. It is not intended that any such showing be by or on behalf of the wrongful petitioner."

**REGULATIONS:**

- 25 C.F.R. Part 23 (2003). Indian Child Welfare Act
- Bureau of Indian Affairs, *Guidelines for State Courts; Indian Child Custody Proceedings*, 44 Fed. Reg. 67584 (November 26, 1979). Reprinted in SANDRA MORGAN LITTLE, CHILD CUSTODY AND VISITATION (2000), Appendix 29B.  
B.8. Improper removal from custody [44 Fed. Reg. 67590]

**COURT CASES:**

- *D.E.D. v. State*, 704 P.2d 774, 780 (Alaska 1985). "Thus, as the State's notes, there was nothing in R.S.'s petition which demonstrated that there was any basis for declining jurisdiction under either § 1913 or § 1920."

**WEST KEY NUMBERS:**

- *Indians* #6. Protection of persons and personal rights
- *Indians* #27(2). Actions. Jurisdiction

**DIGESTS:**

- ALR DIGEST: *Indians* #1

**ENCYCLOPEDIAS**

- 41 AM JUR 2d *Indians* §§ 144-153 (1995).  
§ 145. Generally; tribal jurisdiction
- 42 C.J.S. *Indians* §§137-153 (1991).
- 19 FEDERAL PROCEDURE LAWYERS EDITION, *Indians and Indian Affairs* §§46:469 - 488 (2000). Child custody proceedings under Indian Child Welfare Act

§46:472. State court's declining jurisdiction upon improper removal of child from custody

**TEXTS &  
TREATISES:**

- SANDRA MORGAN LITTLE, 4 CHILD CUSTODY AND VISITATION (2002). Chapter 29. The Indian Child Welfare Act and Laws Affecting Indian Juveniles.

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# Chapter 6

# Grandparents' Rights

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*A Guide to Resources in the Law Library*

## **Sections in this chapter:**

<i>§ 6.1 GRANDPARENT VISITATION AND CUSTODY IN CONNECTICUT.....</i>	<i>110</i>
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## Section 6.1

# Grandparent Visitation and Custody in Connecticut

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*A Guide to Resources in the Law Library*

- SCOPE:** Bibliographic resources relating to the rights of grandparents to seek visitation with or custody of grandchildren.
- SEE ALSO:** [Child Custody Actions in Connecticut](#)  
[Visitation Actions in Connecticut](#)
- STATUTES:** CONN. GEN. STAT. (2003)
- § 46b-56 Superior court orders re custody and care of minor children in actions for dissolution of marriage, legal separation and annulment ...
  - § 46b-56b Presumption re best interest of child to be in custody of parent.
  - § 46b-57 Third party intervention re custody of minor children. Preference of child.
  - § 46b-59 Court may grant right of visitation to any person.
- LEGISLATIVE:**
- Saul Spigel, [Grandparents' Custody of Grandchildren](#), Connecticut General Assembly, Office of Legislative Research Report No. 2003-R-0596 (Sept. 22, 2003).
  - Sandra Norman-Eady, [Grandparent Rights](#), (summary of *Troxel v. Granville*), Connecticut General Assembly, Office of Legislative Research Report No. 2000-R-0644 (June 27, 2000).
  - George Coppola, [Grandparents' Visitation Rights](#), Connecticut General Assembly, Office of Legislative Research Report No. 98-R-0832 (July 24, 1998). Full text in **Appendix B**.
  - Saul Spigel, [Grandparents Rights Concerning Their Grandchildren in Foster Care](#), Connecticut General Assembly, Office of Legislative Research Report No. 98-R-0366 (February 25, 1998).
- COURT RULES** CONNECTICUT PRACTICE BOOK (2004 ed.)
- Chapter 25 *Superior Court - Procedure in Family Matters*
    - § 25-3 Action for Custody of Minor Child
    - § 25-4 Action for Visitation of Minor Child
    - § 25-5 Automatic Orders Upon Service of Complaint
    - § 25-23 Motions, Requests, Orders of Notice, and Short Calendar
    - § 25-24 Motions
    - § 25-30 Statements to be Filed
    - § 25-34 Procedure for Short Calendar
    - § 25-57 Affidavit Concerning Children

§ 25-59 Closed Hearings and Records  
§ 25-62 Appointment of Guardian Ad Litem

## **FORMS:**

### Official Forms

- JD-CL-12 Appearance
- JD-FM-75 Application for Waiver of Fees
- JD-FM-161 Custody / Visitation Application
- JD-FM-162 Order to Attend Hearing and Notice to the Defendant
- JD-FM-158 Notice of Automatic Orders
- JD-FM-164 Affidavit Concerning Children
- JD-FM-164A Addendum to Affidavit Concerning Children
- JD-FM-6 Financial Affidavit
- JD-FM-176 Motion for Orders Before Judgment (Pendente Lite)
- JD FM-183 Custody/Visitation Agreement

### *Unofficial Forms*

- MARY ELLEN WYNN & ELLEN B. LUBELL, HANDBOOK OF FORMS FOR THE CONNECTICUT FAMILY LAWYER 114--115 (1991).
- 1A DOUGLAS B. WRIGHT & JOHN H. YEOMANS, CONNECTICUT LEGAL FORMS §1101.14 (1983). "Application of Grandparents to Intervene and for Visitation Rights pending Action."
- McDuffee v. McDuffee, 39 Conn. App. 142 (1995), Connecticut Appellate Records & Briefs, June 1995.  
*Motion to Intervene, Motion for Temporary Custody & Motion for Custody*
- Lehrer v. Davis, 214 Conn. 232 (1990), Connecticut Supreme Court Records & Briefs, January 1990.  
*Complaint for Visitation*

## **CASES:**

- Troxel v. Granville, 530 U.S. 57, 120 S.Ct. 2054, 2062 (2000). "In an ideal world, parents might always seek to cultivate the bonds between grandparents and their grandchildren. Needless to say, however, our world is far from perfect, and in it the decision whether such an intergenerational relationship would be beneficial in any specific case is for the parent to make in the first instance. And, if a fit parent's decision of the kind at issue here becomes subject to judicial review, the court must accord at least some special weight to the parent's own determination." (p. 2062)
- Clements v. Jones, 71 Conn. App. 688, 696, 803 A. 2d 378 (2002) "We conclude in the present case, as the Supreme Court did in *Roth*, that there is an 'absence of the essential allegations and proof in support thereof, both of the nature of the relationship between the [plaintiff] and the defendant's minor [child] as well as the harm that the [child] might suffer were visitation denied...'"
- Roth v. Weston, 259 Conn. 202, 205, 789 A. 2d 431 (2002). "We conclude that the statute is unconstitutional as applied to the extent that the trial court, pursuant to the statute, permitted third party visitation contrary to the desires of a fit parent and in the absence of any allegation and proof by clear and convincing evidence that the children would suffer actual, significant harm if deprived of the visitation."  
"...interference is justified only when it can be demonstrated that there is a compelling need to protect the child from harm." (229)
- Crockett v. Pastore, 259 Conn. 240, 250, 789 A.2d 453 (2002). *Maternal*

*grandmother's petition for visitation; defendant father has sole custody; defendant father and child's mother were never married and mother's parental rights were terminated.* "Because the plaintiff failed to meet the requirements under § 46b-59 that she allege and prove that she has a parent-like relationship with the child and that the trial court's failure to grant visitation with her would cause the child to suffer serious, real and significant harm, we conclude that the trial court did not have jurisdiction over the plaintiff's petition for visitation."

- Greene v. Thornton, No. FA03 0069920 (Conn. Super. Ct., Putnam, Jan. 13, 2004), 2004 Conn. Super. Lexis 117. "Therefore, in *Roth*, we brought these principles to bear, applying a judicial gloss to § 46b-59. We concluded that a trial court is without jurisdiction to consider a petition for visitation pursuant to that statute in the absence of specific, good faith allegations that: (1) the petitioner was someone with whom the child had a parent-like relationship; and (2) the child would suffer real and significant harm if deprived of the visitation. *Id.* Specifically, the degree of harm must be "analogous to the kind of harm contemplated by [General Statutes] §§ 46b-120 and 46b-129, namely, that the child is 'neglected, uncared-for or dependent.' *Id.*"
- Pivnick v. Lasky, 34 Conn. L. Rptr. 426 (Conn. Super., Hartford, Mar. 24, 2003). "The question presented by this motion is whether the standard articulated in *Roth v. Weston*, invalidates the prior orders in this case which have allowed for grandparent visitation... The court concludes that the decision of *Roth v. Weston* does override the prior court orders in this matter granting visitation rights to third parties against the wishes of a fit custodial parent."
- Foster v. Foster, 33 Conn. L. Rptr. 24 (Conn. Super., New London, Aug. 19, 2002), 2002 Conn. Super. Lexis 2791, *aff'd in part and rev'd in part by* Foster v. Foster, 84 Conn. App. 311 (2004). "The court concurs ... that the constitutional protection afforded by *Roth v. Weston* to a parent-child relationship applies equally to custody actions under General Statutes §§ 46b-56 and 46b-57... What the plaintiff fails to point out in the present case is that the underpinning of both *Roth v. Weston* and ... *Troxel v. Granville*, 530 U.S. 57 (2000), was the presumption of parental fitness..."
- In Re Kristy L. v. Ragaglia, 47 Conn. Supp. 273, 284, 787 A.2d 679 (2001). "So, even though courts have been more cognizant of the ever changing family unit, [it] is imperative for this court to place strong emphasis on the fact that the parental rights of the petitioner's have been terminated and to find the grandparents no longer possess a legally protected right and, therefore, they lack standing to bring a habeas corpus action." "... the grandparents' rights are derivative of the parent's rights, and when the parent's rights are terminated, the grandparents no longer have a legally protected interest." (286)
- Castagno v. Wholean, 239 Conn. 336, 352, 684 A.2d 1181 (1996), *overruled by* Roth v. Weston, 259 Conn. 202, 789 A.2d 431 (2002). "... the legislature intended §46b-59 to afford the trial court jurisdiction to entertain a petition for visitation only when the minor child's family life has been disrupted in a manner analogous to the situations addressed by §§ 46b-56 and 46b-57... Although the death of a parent or the de facto separation of the parents may allow an action, there may be other times when an action is also warranted..."
- Busa v. Busa, 24 Conn. App. 426, 428, 589 A.2d 370 (1991) "... §46b-56b ... creates a presumption ... that it is in the best interest of the child to be in the custody of the parent. This presumption can be rebutted only by showing that it would be detrimental to the child to permit the parent to have custody."
- McClure v. Perkins, No. 0548540 (Conn. Super. Ct., New London, July 28,



1999), 25 Conn. L. Rptr. 166. The paternal grandparents sought visitation with their grandchild four years after the father's parental rights were terminated. "Irrespective of whatever claim the Plaintiff might have made had she acted in a more timely fashion, the new family unit that presently exists ... is deserving of the same protections envisioned by *Castagno*."

**TEXTS & TREATISES:**

- 8 ARNOLD H. RUTKIN ET AL., CONNECTICUT PRACTICE: FAMILY LAW AND PRACTICE WITH FORMS § 42.11, § 42.45 (2000).
- 2 SANDRA MORGAN LITTLE, CHILD CUSTODY & VISITATION LAW AND PRACTICE Ch. 11 (2004). Disputes Between Parents and Third Parties.
- 1 Ann M. Haralambie, HANDLING CHILD CUSTODY, ABUSE AND ADOPTION CASES Ch. 10 (1993). Third Party Custody and Visitation
- 1 Donald T. Kramer, LEGAL RIGHTS OF CHILDREN (2d ed., 1994).  
§2.16 Preference of Natural Parent(s) over Grandparents (child custody)  
§§3.04 - 3.05 Grandparents

**ENCYCLOPEDIAS:**

- George L. Blum, Annotation, *Grandparents' Visitation Rights Where Child's Parents are Living*, 71 A.L.R. 5<sup>th</sup> 99 (1999).
- Annotation, *Grandparent Visitation Rights*, 90 A.L.R. 3d 222 (1979)
- Carol A. Crocca, Annotation, *Continuity of Residence as Factor in Contest Between Parent and Nonparent for Custody of Child Who has been Residing with Nonparent—Modern Status*, 15 A.L.R. 5<sup>th</sup> 692 (1993).

**LAW REVIEWS:**

- John R. Logan, *Connecticut's Visitation Statute After 'Troxel v. Granville,'* CONN. LAW. NOV. 2000, at 4.
- Koreen Labrecque, Note, *Grandparent Visitation After Stepparent Adoption*, 6 Conn. Prob. L. J. 61 (1991).
- Kristine L. Roberts, *State Supreme Court Applications of Troxel v. Granville and the Court's Reluctance to Declare Grandparent Visitation Statutes Unconstitutional* (Troxel v. Granville and its Implications for Families and Practice: A Multidisciplinary Symposium), 41 FAM. CT. REV. 14 (2003).
- Laurence C. Nolan, *Beyond Troxel: the Pragmatic Challenges of Grandparent Visitation Continue*, 50 DRAKE L. REV. 267 (2002).
- Linda Quinton Burr, *Selecting and Questioning Expert Witnesses When Grandparents Want the Kids*, in 2001 FAMILY LAW UPDATE, ch. 6 (2001).
- David G. Savage, *Parents First: Supreme Court Warns Judges to be Cautious When Granting Visitation Rights to Grandparents*, 86 ABA J., August 2000, at 38.
- Beatrice Yorker, et seq., *Custodial Relationships of Grandparents Raising Grandchildren: Results of a Home-based Intervention Study*, 49 Juv. & Fam. Ct. J., no. 2 (Spring 1998), p. 15.
- J.C. Bohl, *Brave New Statutes: Grandparent Visitation Statutes as Unconstitutional Invasions of Family Life and Invalid Exercises of State Power*, 3 Geo. Mason U. Civil Rights L. J. 271 (1993).
- 

**COMPILER:**

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# Appendix A

## Child Custody and Visitation

### **Child Custody In Marriage Dissolutions—OLR Report 99-R-791**

You asked for a brief summary of Connecticut's divorce law concerning child custody

### **Presumption For Joint Custody In Divorce — OLR Report 2000-R-0759**

You wanted to know the legislative history of Connecticut's law presuming joint custody is in a child's best interest when the parents divorce.

### **Modifying Visitation Orders After Divorce — OLR Report 2001-R-0250**

You wanted to know what existing state laws could prevent a father who had sexually abused another child from having unsupervised visits with his daughter following a divorce.

### **Department Of Children And Families Policy On Siblings — OLR Report 2000-R-0895**

You asked how the Department of Children and Families (DCF) treats siblings in abuse and neglect cases. You wanted to know if it (1) removes all siblings from the home if one is abused, (2) places them together, and (3) seeks to terminate parental rights to all children in the family. You also wanted to know how many termination petitions DCF files a year and how many are granted.

## CHILD CUSTODY IN MARRIAGE DISSOLUTIONS

Report # 99-R-0791

August 5, 1999

Lawrence K. Furbish, Assistant Director

You asked for a brief summary of Connecticut's divorce law concerning child custody.

### SUMMARY

Judges use the "best interests of the child" standard in awarding custody of minor children. If both parents agree, the statutes establish a presumption of joint custody. There is also a presumption that it is in the child's best interest to be in the custody of a parent over a non-parent. But, testimony or other evidence can rebut both of these presumptions.

### BEST INTEREST STANDARD

In any family relations case, including dissolutions, the court is authorized to require an investigation of the circumstances of the child and family, and if it orders one, it cannot dispose of the case until the investigation report has been filed (CGS § 46b-6 and 7). The investigation can include the child's parentage and surroundings; his age, habits, and history; the home conditions, habits, and character of his parents; an evaluation of his physical and mental condition; the cause of the marital discord; and the financial ability of the parties to provide support. The court may also appoint counsel for any minor child when it deems it to be in the child's best interest (CGS § 46b-54).

The court can make and modify any order regarding custody, care, support, or visitation (CGS § 46b-56). The court can assign custody to the parents jointly, to either parent, or to a third party "according to its best judgment upon the facts of the case and subject to such conditions and limitations as it deems equitable." In making or modifying such an order the court must "(1) be guided by the best interests of the child, giving consideration to the wishes of the child if the child is of sufficient age and capable of forming an intelligent preference, provided in making the initial order the court may take into consideration the causes for dissolution of the marriage or legal separation if such causes are relevant in determination of the best interest of the child and (2) consider whether the party satisfactorily completed participation in a parenting education program."

### JOINT CUSTODY PRESUMPTION

Joint custody is defined as an order awarding legal custody to both parents, providing for joint decision-making by the parents, and requiring that physical custody be shared by the parents so as to ensure the child has continuing contact with both parents (CGS § 46b-56a). The court can award joint legal custody without awarding joint physical custody if the parents agree to it.

The statute establishes a presumption that joint custody is in the child's best interest, if the parents have so agreed. In such a case, if the court declines to enter a joint custody award, it must state in its decision why it denied the joint custody award. If only one parent seeks joint custody, the court can order both parties to submit to conciliation at their own expense with the costs allocated between them based on ability to pay and as determined by the court.

### PARENTAL CUSTODY PRESUMPTION

In any custody dispute involving a parent and a non-parent, the law establishes a presumption that it is in the child's best interest to be in a parent's custody (CGS § 46b-56b). A showing that it would be detrimental for the child to be in the parent's custody can rebut this presumption.

The law specifically authorizes interested third parties to file a motion to intervene in a custody dispute (CGS § 46b-57). The court can award full or partial custody to such a party "upon such conditions and limitations as it deems equitable." In such situations the court must appoint an attorney to represent the child's best interest. The same conditions described above that must guide the court in making its decision apply, such as the child's best interest and his wishes, if he is of sufficient age.

#### PARENTING EDUCATION

CGS § 46b-69b requires the family division of the Judicial Branch to establish a parenting education program to educate people on the impact on children of the restructuring of families. The program must include information on the developmental stages of children, the adjustment of children to parental separation, dispute resolution and conflict management, visitation guidelines, stress reduction for children, and cooperative parenting.

The court must order any party to a family relations dispute to participate in the parenting education program unless: (1) the parties agree, with the court's approval, not to participate; (2) the court determines that participation is not necessary; or (3) the parties select and participate in a comparable parenting education program.

LKF:pa

## PRESUMPTION FOR JOINT CUSTODY IN DIVORCE

2000-R-0759

July 26, 2000

Saul Spiegel

You wanted to know the legislative history of Connecticut's law presuming joint custody is in a child's best interest when the parents divorce.

### SUMMARY

Connecticut law makes the best interests of the child the standard for judges to use when making custody decisions in divorce cases. The law presumes that the parents' joint custody is in the child's best interest, but only if they both agree to this. It requires a judge who makes a custody order contrary to the parents' joint custody agreement to state his reasons (CGS §§ 46b-56, 56a).

The presumption for joint custody was enacted in PA 81-402. This act began as HB 5087, which was co-sponsored by representatives Tulisano and Jaekle. Senator Curry proposed similar legislation (SB 133). The Judiciary Committee heard both bills on March 24, 1981. The Permanent Commission on the Status of Women (PCSW), the Divorced Men's Association, Connecticut Legal Services, and a family therapist testified in support of the presumption of joint custody, but some had reservations about other provisions. Representative Farr opposed it. The committee favorably reported a substitute bill that, among several provisions, (1) granted a presumption that joint custody was in the child's best interests both when the parents agreed to it and when only one parent asked for it and (2) made joint custody the explicit preference in awarding custody.

Most of the discussion in the House centered on an amendment that eliminated the preference for joint custody and the presumption in its favor when only one parent asked for it. In advocating for the amendment Representative Farr stated that the bill was "going to reverse what has been the historic presumption of custody in favor of women." Representative Tulisano said that the bill would assure that no court would intervene without good reason when both parents wanted joint custody, which was not necessarily the case at the time. The Senate did not discuss the presumption for joint custody.

### HB 5087, AN ACT CONCERNING JOINT CUSTODY

The bill (1) established a presumption that joint custody is in a child's best interests when both parents agree to it, (2) required the court to state its reasons for denying joint custody when both parents agreed, (3) required conciliation at the parents' expense if they both agreed to joint custody but could not settle on how to implement it, and (4) eliminated the court's ability to consider the causes for the divorce in determining custody. The House referred it to the Judiciary Committee, which held a public hearing on it and similar legislation (SB 133) proposed by Senator Curry that also allowed a joint custody award when either parent asked for it.

*Judiciary Committee Public Hearing (Judiciary Committee Proc. March 24, 1981, pp. 1211-1227, 1279-96, 1310-12, 1359-61).*

Support. Wendy Susco, speaking for the PCSW, said the bill would have the commission's wholehearted support were it not for a section that required parents who could not agree on joint custody implementation to submit to and pay equally for conciliation. She believed the presumption of joint custody would constrain judges who did not like it to point to facts in the record before awarding sole custody over the parents' agreement. She recognized that joint custody was controversial and that some people doubted its beneficial effect on children. The PCSW thought, though, that parents should be encouraged to explore its feasibility. In response to a question by Senator Labriola concerning the long-term effects of joint custody

orders, Susco said they were relatively rare and pointed to a PCSW study of divorces between 1975 and 1976 that showed a “very, very tiny number” of joint custody orders.

Shirley Pripstein and Raphael Podolsky, both representing legal services organizations, favored awarding joint custody when both parties agreed. Pripstein said that some judges found the concept to be “alien,” and she had seen judges award custody to the mother even when both parents asked for joint custody; she called the bill a “positive step.” Podolsky agreed with Pripstein. He said, “...if both parents want custody, they should get it—there is no reason why a court should interfere with that.”

But he pointed out one problem with a presumption for joint custody. Many divorces, he stated, were default actions—the defendant does not participate, does not file an appearance, and does not respond. “It is a meaningless burden in such a case,” Podolsky stated, “to ask somebody to put on proof that joint custody is unsuitable when there is nobody asking for joint custody and no parent interest” (Judiciary Committee Proc. p. 1296).

Bob Adams, president of the Divorced Men’s Association of Connecticut, said that parents already agreeing to joint custody need not have judicial sanction. He asked for an amendment to HB 5087 to give first preference in custody assignments to both parents jointly, then to either parent.

**Opposition.** Representative Farr was the only speaker to oppose HB 5087. His primary objection was that the existing system, in which no parent had a legal presumption to custody, worked. He believed it was a dangerous precedent for the legislature to presume what was in the best interests of a child. Divorce cases are difficult, he said, “I don’t think its appropriate for the legislature to start raising presumptions which I think are simply going to make it more difficult to deal with these cases, and its going to make it more difficult to really get to the heart of the issue which is what is in the best interests of the child” (*Judiciary Committee Proc.*, p. 1227).

#### Judiciary Committee Action

The committee reported a substitute bill that incorporated some provisions of SB 133 and suggestions of speakers at the public hearing. It:

1. extended the presumption of joint custody to situations where either parent asked for it, not just to when both agreed to it,
2. specified that the presumption was inoperative if one parent did not appear and defaulted,
3. allowed the court to give joint custody preference over custody to either parent,
4. specified that the court could consider the causes of the divorce when deciding custody only if they were relevant to the child’s best interests, and
5. redefined “joint custody” to mean both legal custody and physical custody that provided the child with meaningful access to both parents (the original bill defined it only as meaningful access to both parents), and
6. dropped the conciliation provision.

#### House Action (**House Proc., May 21, 1981, pp. 6750-6804**).

The House debate centered on House Amendment “A” offered by Representative Farr and introduced by Representative Fox. The amendment (1) removed the preference for joint custody, (2) specifically included joint decision-making in the definition of joint custody, (3) eliminated the presumption that joint custody was in the child’s best interest when only one parent asked for it, (4) required conciliation efforts between

the parents if only one asked for joint custody, and (5) eliminated the provision making the presumption inoperative in default divorce situations.

Most of the debate on the amendment focused on removing the preference for joint custody and on the conciliation provision. Opponents of the amendment, especially representatives Joyce, Onorato, and Sorensen, argued that removing this preference retained the status quo. Representative Onorato called the preference the “gist of joint custody.” He contended that if the amendment were adopted nothing would change—the courts would award joint custody if both parents wanted it but, if not, they would probably award sole custody to the mother, not joint custody. Representative Joyce expressed his belief that the amendment “destroyed the joint custody concept.”

The amendment’s proponents—principally representatives Fox, Farr, and Tulisano—argued that

1. the bill’s language granting the presumption for joint custody (which the amendment did not affect) was “going to reverse what has been the historic presumption of custody in favor of women” (Farr),
2. the preference for joint custody could work against the best interests of a child when the parents disagreed over custody arrangements (Fox and Farr),
3. the amendment brought Connecticut closer to the California model, which gave first preference to joint and sole custody and subsequent preferences to third parties (Farr),
4. the unamended bill probably would not pass and that the amendment, while not perfect, helped to achieve one more step, that is “when parents agree that they want joint custody, no court is going to intervene except for good reason..., which was not “necessarily the law today” (Tulisano).

The amendment passed 93 to 49. The amended bill passed 115 to 27 with no further debate on the presumption of joint custody.

#### Senate Action

The Senate did not debate the presumption for joint custody. It focused on Senate Amendment “B,” offered by Senator Skowronski, which eliminated the bill’s conciliation provision. It was defeated. Senator Owen introduced Senate Amendment “A”, a technical change. It was adopted by voice vote but then reconsidered and withdrawn when proponents of Senate Amendment “B” pointed out that because of Senate “A the bill would have to return to the House for action in the last days of the session, which could jeopardize its ultimate passage.

SS:eh



## MODIFYING VISITATION ORDERS AFTER DIVORCE

2001-R-0250

February 23, 2001

Saul Spiegel

You wanted to know what existing state laws could prevent a father who had sexually abused another child from having unsupervised visits with his daughter following a divorce.

### SUMMARY

Three laws apply in the situation your constituent relates: (1) a judge's visitation decision must be guided by the child's best interest; (2) a parent can ask the court to appoint an attorney to represent the child and the court on its own can appoint an attorney for this purpose or a guardian ad litem to represent the child's best interest; and (3) the court can order an investigation of any circumstance that may be relevant to the proper disposition of the case.

Connecticut case law suggests that a parent does not have an absolute right to visitation. Visitation arrangements depend on the child's best interests and can be restricted. The plaintiff (in this case the father seeking to modify the visitation order) has the burden of proving that visitation is in the child's best interests.

### CHILD'S BEST INTERESTS

Superior Court judges can make and modify visitation orders in a divorce. The law sets two criteria for their decisions: the best interests of the child and the child's preference, if the judge believes he or she is old enough and capable of making an intelligent choice (CGS § 46b-56(b)).

The *Connecticut Practice Book on Family Law and Practice* lists several criteria courts have used in determining visitation. They include: (1) past behavior as it relates to parenting *ability* (*Seymour v. Seymour*, id.), (2) the effect of the parent's behavior on the child (*Yontef v. Yontef*, 185 Conn. 275), (3) a parent's psychological instability posing a threat to the child's well being (*Ridgeway v. Ridgeway*, 180 Conn. 533), and (4) a parent's sexual activity (*Trunik v. Trunik*, 179 Conn. 287).

Unless a parent is completely unfit, case law says he or she should have visitation rights under such restrictions as the circumstances warrant. But, a parent does not have an absolute right to visitation; it depends on the best interests of the child. Visitation can be restricted or terminated under the proper circumstances (*Raymond v. Raymond*, 165 Conn. at 741). Courts impose restrictions where there is evidence that visitation would have harmful effects on the child. For example, the Connecticut Supreme Court upheld a restriction that barred a child from staying overnight in his father's home as long as the father continued to live out of wedlock with a particular woman (*Gallo v. Gallo*, 184 Conn. 36). The plaintiff has the burden of proving that visitation is in the child's best interests (*Temple v. Meyer*, 208 Conn. 404).

### REPRESENTATION FOR THE CHILD

If he believes it is in a child's best interests, a judge can appoint an attorney to represent the child at any time during the divorce proceedings, including when one party asks for modification of a visitation order. Either of the parents can ask for this appointment, or the court can make the appointment on its own (CGS § 46b-54). A judge may also appoint a guardian ad litem to represent the child's best interests (CGS § 45a-132). (In some cases, these can differ from the child's wishes, which the attorney represents).

The legal handbook, *Family Law Practice in Connecticut* (§10.24), states that where allegations of child abuse exist, it is preferable to appoint counsel for the child early in the process. This serves to protect the child, but it also serves to insulate the accused parent from further allegations.

## INVESTIGATION

A court can order an investigation of any circumstances of a case if it believes this will be helpful or material to its proper disposition. An investigation can include an inquiry into the parents' habits and character. Once an investigation is ordered, the case cannot be disposed of until the report is filed and attorneys for all parties have the opportunity to review it (CGS §§ 46b-6, 7). A court family relations officer conducts the investigation.

SS:ts

DEPARTMENT OF CHILDREN AND FAMILIES POLICY ON SIBLINGS  
2000-R-0895  
September 25, 2000

Saul Spiegel

You asked how the Department of Children and Families (DCF) treats siblings in abuse and neglect cases. You wanted to know if it (1) removes all siblings from the home if one is abused, (2) places them together, and (3) seeks to terminate parental rights to all children in the family. You also wanted to know how many termination petitions DCF files a year and how many are granted.

DCF's policy is to maintain children in their own homes whenever possible. The only reference DCF's Policy Manual makes regarding the removal of siblings during an abuse or neglect investigation is for staff to consider the risk to the siblings of the child who is allegedly abused or neglected (DCF Policy Manual 34-10-3). Josh Howroyd, DCF's legislative liaison, suggests that the department, when exercising its emergency authority to remove a child for 96 hours, may in some cases decide to remove all siblings just to allow the situation "to settle" and give its social workers a chance to investigate fully. But, he notes, if DCF then decides to ask the court to place the children in its custody, it must file separate petitions for each sibling and prove that each one has been, or is in imminent danger of, being abused or neglected.

Once they are removed from home and placed in its custody, DCF's policy is to keep siblings together in the same foster setting unless one or more of them has documented special needs that preclude placing them together. The policy manual does not specify what kinds of special needs could lead to sibling separation. Siblings who are placed apart must be reunited in a single setting unless exceptional reasons preclude reunification. The manual gives one reason for DCF not to seek reunification: one sibling has been in the continuous care of a foster parent since birth, the foster parent cannot or will not accept another child, and it is not in the first child's best interest to move to another foster home (Policy Manual, 36-55-6 and 41-19-2).

DCF asked the legislature this year to codify its practice and to require it to file a written statement with the court clerk when siblings requiring out-of-home placement were separated. But SB 312, in which this request was contained, died on the House calendar.

As with its decision to seek court-ordered custody of siblings, when DCF asks the court to terminate parental rights (TPR), it must file separate petitions for each sibling and build a separate case as to why the parents' rights should be terminated for each one.

We have asked both DCF and the Judicial Branch for data on TPR applications and denials. Neither has responded to date, but we will forward that data to you when we receive it.

SS:ts

# Appendix B

## Parental Kidnapping

### Custodial Interference

<i>Summary</i>	<i>125</i>
<i>Facts</i>	<i>126</i>
<i>Custodial interference</i>	<i>128</i>
<i>Restraining Order Law</i>	<i>128</i>

February 4, 1998

**OLR Report 98-R-0192**

<b>FROM: George Coppolo, Chief Attorney</b>
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You asked us to review the attached materials and indicate whether legislation should be considered.

**SUMMARY**

The attached materials describe a situation involving an Iranian couple and their minor child who became embroiled in a custody, visitation, and domestic violence dispute while visiting relatives in Connecticut. The unusual set of circumstances culminated when the husband took the child out of the country without his wife's knowledge or consent.

The legislative change you may wish to consider is amending the custodial interference criminal statutes to include the situation where a parent who has visitation rights takes the child without the other parent's consent even though either no custody order has ever been issued by the court to the other parent or such an order has expired.

In this case the mother had a restraining order and a temporary custody order and the father had a visitation order. Unfortunately, the restraining order and temporary custody order had expired just prior to the time the husband took his daughter back to Iran. Thus, at least in the opinion of one Superior Court judge, the custodial interference law did not apply since both parents had custody at the time the father removed the child from the United States.

Even if the father had violated the custodial interference law in this case it would not have mattered since apparently he was able to leave the country less than 24 hours after he took his daughter and the United States does not have diplomatic relations with Iran. According to Barbara Green, the mother's attorney, if almost any other country had been involved, the mother would have legal recourse.

## **FACTS**

The following information is based on newspaper accounts of the situation and a discussion we had with attorney Barbara Green who represented the mother in a portion of the custody proceedings.

Ovang Farbiz and Leyla Mirjauadi, Iranian citizens, were married in Tehran, Iran on November 14, 1990. Their first and only child, Saba, was born on March 9, 1994. They came to the United States September 14, 1995 to visit family members and stayed with Mirjauadi's brother Zia Mirjauadi in Stamford. Around one month later, on October 15, Leyla moved out of her brother's Stamford home with her daughter Saba and moved into her sister's Stamford home.

On October 15, 1995 she applied for a restraining order in Superior Court barring Farbiz from contact with her. She also sought an order of temporary custody. The order was in effect for less than two weeks when a judge denied the application after the court reviewed the case. Apparently, in her application, Leyla alleged that her husband physically and verbally abused her. Farbiz denied abusing his wife. He claimed that she wanted to get a divorce so she could get a green card and stay in the United States. He also claimed that that they had argued because he did not want to get a divorce. Farbiz informed the court that he had a profitable computer business in Iran, and after gathering information about computer technology in the United States, had planned to return to Iran with his wife and daughter. Apparently neither party was represented at the hearing.

A little over one month later on December 4, 1995, Farbiz filed a motion in Superior Court seeking "liberal, frequent, and reasonable visitation." He claimed he tried to call his wife to see his daughter but she would not accept her calls. Judge Dennis Harrigan granted the application for visitation on February 5, 1996, but ordered that visitation be supervised by a third party. Specifically, the court allowed Farbiz to see his daughter for five hours every Sunday at his brother-in-law's (Zia Mirjauadi) house in Stamford. This arrangement only lasted for three weeks. Leyla and Zia claimed Farbiz refused to cooperate, made death threats, and used obscene language. Farbiz denied this alleging that he was harassed, threatened, and denied meaningful visitation with his daughter. Both sides called the police to complain.

Subsequently, attorneys representing both parties brought in Stamford therapist Barbara Ivler to supervise the visitation. From early April into July, Farbiz paid \$80 an hour to be with his daughter once a week at the therapist's office. Apparently because Farbiz was doing so well, the therapist recommended that the visitation arrangement be changed because meeting in a therapist's office was so unnatural.

At the suggestion of Farbiz's attorney, visitation supervision was turned over to Maria Varone, a local legal services attorney. The parties agreed that the visitation would occur at the Stamford town center, a large shopping mall. This arrangement worked from late July through September 1996.

On October 6, 1996, during a scheduled visitation, Farbiz managed to take his daughter from the mall while his uncle Anthony Vakilzadeh distracted Varone. After leaving the mall, Farbiz and his daughter took a limo to JFK Airport and caught a flight to Iran where they are presently living. Leyla had applied for political asylum in the United States around one month after she left her husband. She subsequently was granted it and thus she can remain in the United States as a legal resident. During December of 1996, Judge Horrigan awarded her full legal and physical custody of her daughter.

Leyla maintains that she cannot return to Iran because she will be arrested. According to a December 17, 1996 Stamford Advocate story regarding this matter, under Iranian law, a man can divorce his wife any time he wishes; but a woman may do so only under exceptional circumstances and with the court's permission. Also, according to this story, abuse is regarded as a husband's prerogative, there is no social support to women who leave their husbands, and a woman cannot leave Iran without her husband's permission.

The police arrested the uncle, Anthony Vaklzadeh, a civil engineer who resides in New Jersey, on December 7, 1996 and charged him with second degree kidnapping. In addition to distracting the visitation

supervisor, police believe he arranged for transportation on the day Fabrizz took his daughter out of the state and country. Police subsequently charged him with first degree custodial interference.

Subsequently, Judge Harold Dean dismissed the criminal charges against the uncle. The prosecutor had sought to have him prosecuted for first degree custodial interference and conspiracy to commit first degree custodial interference. The prosecutor, James Bernardi, argued that the visitation order of February 5, 1996 gave the mother physical custody of her daughter, effectively stripping Fabrizz of his custodial rights. But defense attorney Michael Sherman asserted that at the time of the abduction, no custody order was in effect.

In dismissing the charges, apparently Judge Dean relied on a state Supreme Court decision (*Marshak v. Marshak*, 226 Conn. 652, (1993)) where the court overturned a civil liability award against people for aiding one parent to abduct his children because at the time of the abduction, the parents had joint legal custody. The *Marshak* court concluded that the criminal custodial interference law was not violated when a parent who has custody abducts his children from the other parent who also has custody. In the absence of a court ruling as to custody, the father and mother of every minor child are joint guardians of the minor and the powers, rights, and duties of the father and mother regarding the minor are equal (CGS § 45a-606).

The mother apparently had hoped the criminal case against Fabrizz's uncle would pressure him to return her daughter to this country. According to Douglas Wells, the mother's attorney, since the United States has no formal diplomatic relations with Iran it may be impossible to force Fabrizz to return his daughter to her mother.

## **CUSTODIAL INTERFERENCE**

CGS § 53a-98 makes it a class A misdemeanor for a relative to take or entice a child under 16 years of age from his lawful custodian with the intention of holding the child permanently or for a protracted period of time and with the knowledge that he has no legal right to do so. It also makes it a class A misdemeanor to refuse to return a child under age 16 after the child's custodian asks him to return the child when he knows he has no legal right to keep the child. This offense becomes a class D felony if the offender takes or entices the child to leave the state or if the child is exposed to a risk that his safety will be endangered or his health materially impaired (CGS § 53a-97). A class A misdemeanor is punishable by imprisonment for up to one year or a fine of up to \$2,000, or both; a class D felony is punishable by imprisonment of up to five years or a fine of up to \$5,000, or both.

## **RESTRAINING ORDER LAW**

Leyla Mirjuadi sought a restraining order and a temporary custody order under the procedures established by CGS § 46b-15. This statute permits spouses and other family or household members who have been subjected to a continuous threat of present physical pain or physical injury by another family or household member to apply to the Superior Court for relief.

The application for relief must include a sworn affidavit, which includes a brief statement of the conditions from which relief is sought.

If an application alleges an immediate and present physical danger to the applicant, the court may issue an ex parte order granting such relief as it deems appropriate. The court must order a hearing on the application within 14 days of the date of any order.

The statute authorizes the court, in its discretion, to make whatever orders it deems appropriate to protect the applicant and such dependent children or other people the court deems appropriate. The order may include temporary child custody or visitation rights. It may also include an order prohibiting the respondent from (1) imposing any restraint on the applicant; (2) threatening, harassing, assaulting, molesting, sexually assaulting or attacking the applicant; or (3) entering the family dwelling or the applicant's dwelling. Court orders may not exceed six months but the court may extend it upon the applicant's motion for whatever additional time it deems necessary.

*GC:lc*



# Appendix C

## Grandparent Rights

Connecticut General Assembly. Office of Legislative Research Report 98-R-0632. July 24, 1998 Report

Connecticut General Assembly. Office of Legislative Research Report 97-R-1367. November 25, 1997 Report

# GRANDPARENTS' CUSTODY OF GRANDCHILDREN

By: Saul Spiegel, Chief Analyst

You asked for an explanation of (1) Connecticut law on grandparents' custody of, and visitation with, their grandchildren and (2) "de facto" custody laws in other states.

## SUMMARY

Grandparents in Connecticut can become the custodian of a grandchild in four ways.

1. They can adopt a grandchild after a court terminates both parents' rights to the child.
2. They can ask the probate court to appoint them as the child's guardian.
3. They can be awarded custody by the Superior Court when the child's parents divorce.
4. They can informally assume custody.

The first three methods provide the grandparents with legal rights in relation to the child and some protection against a parent's attempt to regain custody. The latter method provides no rights or protection.

Three states-Indiana, Kentucky, and Minnesota-allow grandparents (and others) to seek legal custody of a child by showing that they have been the child's de facto custodians. Such a showing requires them to prove that they have been the child's primary caretakers for some period of time in the parents' absence. If they show this, the laws require the court to treat them the same as the parents in making custody decisions. Michigan and South Carolina considered, but did not enact, similar law this year.

## CONNECTICUT LAW

### *Adoption*

Adoption creates a legal relationship of parent and child between people who are not parent and child by birth. Through court action, the adoptive parents gain the same legal duties toward the adopted child as they would toward a birth child. These are the obligation to care for and control the child and make major decisions affecting his or her education and welfare (CGS § 45a-604). Adoption usually involves the complete and final termination of the birth parents' rights.

Any legally competent person age 18 or over may become an adoptive parent by filing an application with the probate court. The court asks the Department of Children and Families (DCF) or a DCF-licensed agency to investigate to find out if he or she will be a fit parent. At a hearing, the court must consider the investigative findings and determine that the adoption is in the child's best interest.

### *Guardianship*

**Removal of Parent as Guardian.** Parents are the legal guardians of their children, which gives them the duty to care for and manage the children's affairs. But the probate court can remove a parent as guardian and give guardianship to a grandparent or other party.

The process begins when the party seeking guardianship files a motion in the probate court (or the court can initiate the change on its own). The court orders an investigation, unless it determines one is not needed. DCF or a DCF-licensed agency conducts the investigation.

After the investigation the court holds a hearing to determine whether to (1) remove the parent as guardian and (2) appoint the applicant as guardian. In determining the first, it must find by clear and convincing evidence (the highest level of proof in a civil matter) that the parent:

1. consents to removal as guardian;
2. has abandoned the child, that is shows no reasonable degree of interest in, or concern or responsibility for, the child;
3. has failed to provide care, guidance, or necessary control over the child's physical, educational, emotional, or moral well-being; or
4. has physically abused the child or given access to the child to another person who abused him.

When deciding whether to appoint the applicant as guardian, the court considers:

1. the applicant's ability to meet on a daily basis the child's physical, educational, emotional, and moral needs;
2. the child's wishes concerning a guardian, if he is sufficiently mature and able to form a preference;
3. the existence of any established relationship between the child and the applicant; and
4. the child's best interest.

A parent still has some rights even if he is removed as a child's guardian. The court may permit the parent to visit the child. And a parent who has been removed may apply to the court that removed him for reinstatement as guardian if he believes the factors that resulted in his removal have been resolved satisfactorily. The court must first hold a hearing to determine whether to reinstate him (CGS §§ 45a-609 to -621).

**Other Forms of Guardianship.** A sole parent or the Department of Children and Families can ask the probate court to appoint another adult as a child's coguardian. In considering this request, the court applies the same criteria as it does for a contested guardianship case (see above). If it agrees to the coguardianship, the court can make it effective immediately or when a specific event, such as the parent's mental incapacity, physical debilitation, or death, occurs. If the coguardianship is contingent on an event, the coguardian must submit a written affidavit that it has occurred before the guardianship becomes effective (CGS § 45a-616).

Instead of going through the probate court, a child's parents can also designate someone to assume guardianship if a specific event like those mentioned above occurs. The designation must be made in writing and witnessed by two people. In order for the guardianship to become effective, the "standby" guardian must produce a written, witnessed document signed under penalty for false statement that the contingent event has occurred (CGS §§ 45a-624 to -624g).

A parent can ask the probate court to appoint someone as temporary guardian for up to one year. The parent can do this if he or she is unable to care for a child for any reason, including illness and absence from home. The guardianship ends when the parent notifies the court and the temporary guardian (CGS § 45a-622).

## ***Custody***

A grandparent or a related or unrelated third party can ask the Superior Court to give them legal custody over a child. This is most often sought when a child's parents are divorcing. Legal custody is like guardianship in that it is a court order giving the grandparent the right to care for and make decisions regarding the child's welfare. And, like guardianship it is not permanent; the court can modify its order at anytime, transferring custody back to a parent or to another adult.

To obtain legal custody, a person must file suit in Superior Court. If both parents consent to the custody change, the court is likely to grant it; if they do not, according to Sandra Lax, a family law attorney in Bridgeport, the applicant must prove (1) that being with his or her parents will harm the child's growth or development or (2) that the parents are unfit to care for their child. The court's decision is guided by the child's best interest.

Parents do not lose their rights when custody is transferred to a third party. The court may require them to pay child support and may give them visitation rights. And a parent can subsequently ask the court to modify its custody order and return the child to him or her (CGS § 46b-57).

## ***Informal Custody***

Connecticut has no laws governing informal custody arrangements between parents and grandparents. Written informal agreements are not legally enforceable and do not give grandparents any legal right to custody. They might give grandparents who are caring for their grandchildren the documentation they need to make decisions for the child, for example enrolling him in a school or obtaining medical records. They can also show that a parent has not abandoned the child, which may help if the parent wants to reclaim custody.

## ***Visitation***

The U. S. and Connecticut Supreme courts have ruled that grandparents have no right to visit with their grandchildren if the parents do not want them to (see OLR reports 97-R-0020 and 2000-R-0644, enclosed). A Connecticut grandparent (or any other third party) can ask the Superior Court to grant a visitation order. The court can do so if it determines visitation is in the child's best interest. If the child is old enough, the court will consider his or her wishes. A visitation order does not give a grandparent any parental or guardianship rights to the child, nor does it create any financial obligation on him (CGS § 46b-59).

## ***DE FACTO CUSTODY LAWS***

### ***Indiana (Indiana Code, 31-14-13-2 to 10)***

Indiana, in 1996, was the first state to give grandparents another option to seek custody of their grandchildren: status as a de facto custodian. The law requires the court to make a person a party to a custody proceeding if it finds by clear and convincing evidence that he is the child's de facto custodian. But

it does not define that term. It makes evidence that the child has been cared for by a de facto custodian one of eight factors the court must consider in determining a child's best interest. And, in making its custody decision the law also requires the court to consider the custodian's wishes; the extent to which he has cared for, nurtured, and supported the child; and the parents' intent and circumstances in placing the child with him. The law requires the court to award custody to a de facto custodian if it determines this is in the child's best interest.

#### **Kentucky (KRS Ann. , § 403. 270 )**

In 1998, the Kentucky General Assembly adopted its version of "*de facto*" custodian. This law defines the term and requires a court that determines a person is a *de facto* custodian to give him or her equal standing in court with a child's parents in cases involving custody of the child.

To qualify as a *de facto* custodian, a person (who could be a person other than a grandparent) must show by clear and convincing evidence that the child has lived with him and he has been child's primary caretaker and source of financial support for:

1. six months or more, if the child is under three years old; or
2. a year or more, if the child is three years old or above or has been placed with the caretaker by the state child protective services agency.

The time a child spends with a grandparent after a parent begins a proceeding to regain custody does not count in determining the required minimum residence and caretaking period.

In deciding whether to give custody to a parent or a *de facto* custodian the court must be guided by the child's best interest and must consider such factors as:

1. the wishes of the parents, child, and the *de facto* custodian;
2. the extent to which the *de facto* custodian has cared for, nurtured, and supported the child;
3. the parents' intent and the circumstances under which the child was placed with the *de facto* custodian, including whether domestic violence was a factor and whether the child was placed to allow the parent to seek work or attend school; and
4. the physical and mental health of all individuals involved.

In addition to awarding custody to one or the other party, the court can award joint custody to the parents and the *de facto* custodian.

In February 2003, the Kentucky Court of Appeals upheld this law in the face of a challenge by a parent who argued that it infringed on the "fundamental right of a natural parent" to determine the care, custody, and control of his child. In a two-to-one ruling, the majority noted that the law requires a court to determine "that the natural parent has abdicated his or her role as primary caregiver for a substantial period of time" (*Rogers v. Blair*, No. 2001-CA-001835-MR, as reported in the Louisville Courier-Journal, February 8, 2003).

#### **Minnesota (Minn. Stat. 257C. 01 to . 07)**

Minnesota adopted its *de facto* custodian law in 2002. It is similar to Kentucky's in some respects but differs significantly in others. The principal differences follow.

1. In making custody decisions, Minnesota courts do not have to give equal standing to parents and de facto custodians; instead, they must not give a parent preference over a *de facto* custodian.

2. In addition to showing that he has been the child's primary caregiver for six months or a year (depending on the child's age), the de facto custodian applicant must show by clear and convincing evidence that the child's parents have neglected to provide food, shelter, clothing, health care, education, nurturing, and other care necessary for the child's development. The law sets specific criteria the court must consider in making this determination, including the parents' intent in placing the child with the de facto custodian and the amount of involvement they had with the child during their absence and whether a sibling is already in the de facto custodian's care.

3. Once he proves that he qualifies as a de facto custodian, the grandparent (or other party seeking custody) must show by a preponderance of evidence that placing the child in his custody is in the child's best interest.

4. If either the parent or potential de facto custodian is receiving public assistance on behalf of the child or public child support enforcement services, notice of the application for custody must be given to the assisting agency.

SS: eh

# GRANDPARENT RIGHTS

By: Sandra Norman-Eady, Senior Attorney

You wanted a summary of the recent U. S. Supreme Court decision in *Troxel v. Granville* on grandparents' rights. You also wanted to know if any bills were introduced during the 2000 legislative session regarding such rights.

## SUMMARY

On June 5, 2000, the U. S. Supreme Court upheld a Washington Supreme Court decision that the state's grandparents' rights statute unconstitutionally infringed on the fundamental right of parents to rear their children. The U. S. Supreme Court held that the statute was overbroad and, as applied to the mother in *Troxel v. Granville*, 120 S. CT. 2054 (2000), unconstitutionally deprived her of the fundamental right to make decisions concerning the care, custody, and control of her children.

The case revolved around a request by paternal grandparents to have greater visitation with their grandchildren, the product of a cohabitating, non-marital relationship. The children stayed with their mother and had limited visits with their paternal grandparents after their father committed suicide.

No bills were introduced this past legislative session regarding grandparents' rights. Thus, there were no changes to Connecticut's visitation statute, which applies to all interested third parties, not just grandparents. Under these statutes, grandparents can ask the Superior Court to grant them visitation. Like the Washington statute, Connecticut's statute requires the court to make its decision based on child's best interests, giving consideration to the child's wishes if he is old enough and capable of forming an intelligent opinion (CGS § 46b-59). But in 1996, the state Supreme Court limited the rights of third parties, like grandparents, to instances where the family unit was involved with the state in a divorce, child abuse, or similar situation (*Castagno v. Wholean*, 239 Conn. 336 (1996)). The Court refused to order visitation in cases of an intact family unit with no court or state agency involvement where the issue is a private dispute between parents and grandparents.

The *Castagno v. Wholean* decision appears consistent with the U. S. Supreme Court's decision in *Troxel v. Granville*. We have attached OLR reports summarizing *Castagno v. Wholean* and our grandparents' rights laws.

## TROXEL v. GRANVILLE

### *Facts*

The Troxels, paternal grandparents of two girls born out of wedlock, sought more time to visit with them. The girls were living with their mother. The Troxels wanted overnight visits two weekends a month and a two-week visit each summer. The mother, Granville, asked the court to order one visit each month with no overnight stays.

### *Procedural History*

The Superior Court took a middle ground approach ordering one weekend visit per month, one week during the summer, and time on the grandparents' birthdays. Granville appealed to the Washington Court of Appeals, which reversed the lower court's visitation order and dismissed the Troxels' petition on the ground that they lacked standing to seek visitation. The Troxels then asked the Washington Supreme Court to review the case. That Court held that the Troxels had standing to sue, but that the statute was unconstitutionally broad and that Troxels failed to show that Granville was an unfit parent. The Troxels sought, and the U. S. Supreme Court granted, *certiorari*.

### ***Issue***

The issue in this case was whether § 26. 10. 160(3) of the Revised Code of Washington, as applied to the mother, Tommie Granville and her family, violates the Due Process Clause of the federal constitution. The statute provides that "any person may petition the court for visitation rights at any time, and the court may grant such visitation rights whenever visitation serves the best interest of the child. "

### ***Analysis***

The Court began its analysis by citing historical precedent for finding that the Due Process Clause of the Fourteenth Amendment to the federal constitution protects against government interference in the liberty interests of parents in the care, custody, and control of their children. (see *Meyer v. Nebraska*, 262 U. S. 390 (1923); *Pierce v. Society of Sisters*, 268 U. S. 510 (1925); and *Washington v. Glucksberg*, 521 U. S. 702 (1997)).

Applying this precedent, the Court reasoned that as long as a parent is fit there is normally no reason for the state to inject itself into the private realm of the family to further question that parent's ability to make the best decisions concerning child rearing.

### ***Holding***

The Court held that the Washington statute, as applied to Granville and her family, unconstitutionally infringed on a parent's fundamental right to rear her children. The Court found the statute overly broad, effectively permitting any third party seeking visitation to subject a parent's decision to state-court review. The Court based its conclusion on three factors: (1) the fact that the Troxels did not allege, and no court found, that Granville was an unfit parent, (2) the court gave no special weight to Granville's determination of her daughters' best interest, and (3) there was no allegation that Granville ever sought to cut off visitation entirely. Absent a finding of unfit parenting, and giving special weight to the parent's decision, the Court found that the Superior Court order was a constitutional infringement on Granville's right to make decision on behalf of her daughters.

SN-E: ts



July 24, 1998

98-R-0832

**FROM: George Coppolo, Chief Attorney**

**RE: Grandparent's' Visitation Rights.** You asked about the right of grandparents to visit their grandchildren. You also asked whether the General Assembly considered any legislation this session related to this issue.

Our office has prepared numerous memos on this subject. OLR 97-R-1367 concisely summarizes the current state of the law. (This is the first memo in the enclosed information.) We have enclosed several other memos relating to this issue. One of these (93-R-0435) looks at how other states deal with this issue. Other OLR memos we have enclosed are 98-R-0031; 98-R-0366; 97-R-0993; 97-R-0508; 97-R-0020; 96-R-0078; and 90-R-0252.

During the 1998 session the legislature considered sSB 258, An Act Providing Financial Support for Grandparents Who Raise Grandchildren. The bill was voted out of the Select Committee on Aging, the Human Services Committee, and the Appropriations Committee. Eventually the Senate recommitted it.

We have enclosed a copy of that bill including the OLR and OFA summaries, the committee report of the Select Committee on Aging, and the public hearing transcript on the bill.

Please let us know if you would like additional information

GC:lc

November 25, 1997  
97-R-1367

FROM: **Lawrence K. Furbish, Assistant Director**

**RE: Grandparents' Visitation Rights**

You asked for background on Connecticut law concerning the rights of grandparents to seek visitation and custody. You specifically wanted to know if grandparents retain any visitation rights if their child loses his or her guardianship rights over the grandchildren.

When a custody dispute is before the Superior Court, the court can allow grandparents, as well as other relatives or interested third parties, to intervene, and it can grant them custody (CGS § 46b-57). In making its decision the court must be guided by the best interest of the child. In addition, in child abuse or neglect situations when petitions are pending in Superior Court for removal of a parent as guardian or termination of parental rights, the court can grant custody of the children to any "proper person," which presumably could include a grandparent (CGS § 17a-113).

Under Connecticut law grandparents and other interested third parties can ask the Superior Court to grant them visitation. But the state Supreme Court has limited this right to instances where the family unit was involved with the state in a divorce, child abuse, or similar situation (Castagno v. Wholean, 239 Conn. 336 (1996)). The Court refused to order visitation in cases of an intact family unit with no court or state agency involvement where the issue is a private dispute between the parent (grandparent) and child (parent of the grandchild).

Regarding cases of loss of guardianship, whether the grandparents retain any visitation rights depends on specific facts. If the probate court removes the parent or parents as guardian under CGS § 45a-610, grandparents and other relatives retain the right to seek visitation from the probate court (CGS § 45a-612).

If the probate court terminates the parent's or parents' parental rights under CGS § 45a-717 or the Superior Court does so under CGS § 17a-112, the grandparents probably would not be able to obtain visitation. Termination of parental rights represents the complete legal severance of the relationship between the child and his parents and by extension his other relatives. Termination of parental rights must take place before an adoption can take place. Under the adoption statutes, all rights, duties, and other legal consequences between the child and his adoptive parents becomes the same as between a child and his biological parents.

In Michaud v. Wawruck 209 Conn. 407 (1988) the Connecticut Supreme Court ruled that an agreement between adoptive parents and a birth mother to allow her to seek visitation with the child after the adoption was not against public policy. The Supreme Court said that the trial court could grant visitation if it was in the best interest of the child. According to Linda Dow, chief counsel to the probate court administrator, such visitation is rarely if ever sought or granted. Because this is a complex legal issue, your constituents should consult an attorney to be sure their rights are protected.

We have attached additional material concerning visitation including a summary (97-R-0020) and copy of Castagno v. Wholean, a summary of grandparents' rights laws in Connecticut and other states (93-R-0435), and a discussion of recent attempts to amend the third party visitation law. The Law Revision Commission is currently studying the issue of if and how the law should be changed. A bill may be introduced in the 1998 session.

LKF:pa

# Table of Cases

Adams v. Adams, 180 Conn. 498, 430 A.2d 19 (1980), § 1.6  
Agnello v. Becker, 184 Conn. 421, 432-433, 440 A.2d 172 (1981), § 5.4  
Alexander v. Gomez, 34 Conn. L. Rptr. 660 (Conn. Super., Danbury, May 30, 2003) 2003 Conn. Super. Lexis 1586., § 3.2  
Anselmo v. Anselmo, No. FA000181708 (Conn. Super. Ct., Stamford, March 28, 2001), 2001 WL 358851, § 5.3  
Antedomenico v. Antedomenico, 142 Conn. 558, 562, 115 A.2d 558 (1955), § 1.2  
Armstrong v. Armstrong, Docket No. FA010828168-S (Hartford Super. Ct. July 25, 2002), § 3.9  
Axelrod v. Avery, 13 Conn. L. Rptr. 124 (New London Super. Ct. Dec. 1, 1994), 1994 WL 684736, 1994 Conn. Super. Lexis 3058, §§ 2.6, 3.8  
Azia v. Dilascia, 64 Conn. App. 540, 546, 780 A.2d 992 (2001), §§ 1.3, 1.4, 3.9  
Baram v. Schwartz, 151 Conn. 315, 318, 197 A.2d 334 (1964), § 2.6  
Baumert v. Baumert, 19 Conn. L. Rptr. 59 (Stamford Super. Ct. Jan. 28, 1997), 1997 WL 66500, 1997 Conn. Super. Lexis 268, § 3.6  
Beveridge v. Beveridge, 7 Conn. App. 11, 16, 507 A.2d 502 (1986), § 2.7, Table 8  
Blake v. Blake, 207 Conn. 217, 223, 541 A.2d 1201 (1988), §§ 1.3, 1.5  
Blondin v. Dubois, 189 F.3d 240, 249 (2d Cir. 1999), § 5.1  
Borkowski v. Borkowski, 228 Conn. 729, 737-738, 638 A.2d 1060 (1994), § 2.5  
Bouchard v. Sundberg, 80 Conn. App. 180, 198-199, 834 A.2d 744 (2003), Table 12  
Bretherton v. Bretherton, 72 Conn. App. 528, 538, 805 A.2d 766 (2002), §§ 1.1, 1.5, 3.9  
Bristol v. Brundage, 24 Conn. App. 402, 405, 589 A.2d 1 (1991), § 1.2  
Brown v. Brown, 195 Conn. 98, 119-120, 486 A.2d 1116 (1985), §§ 5.2, 5.4  
Busa v. Busa, 24 Conn. App. 426, 428, 589 A.2d 370 (1991), §§ 2.2, 6.1  
Cappetta v. Cappetta, 196 Conn. 10, 16, 490 A.2d 996 (1985), §§ 1.1, 1.3, 1.6, 2.2 and Tables 1, 7  
Castagno v. Wholean, 239 Conn. 336, 352, 684 A.2d 1181 (1996), *overruled by* Roth v. Weston, 259 Conn. 202, 789 A.2d 431 (2002), § 6.1  
Christolini v. Christolini, Docket No. FA98-0145598 (Waterbury Super. Ct., April 12, 2000), 2000 Conn. Super. Lexis 1127, § 2.4  
Clements v. Jones, 71 Conn. App. 688, 696, 803 A.2d 378 (2002), § 6.1  
Com. ex rel. Zaubi v. Zaubi, 423 A.2d 333, 335-336 (Pa.1980), § 5.1  
Connolly v. Connolly, 191 Conn. 468, 480, 464 A.2d 837 (1983), §§ 2.3, 3.3  
Cookson v. Cookson, 201 Conn. 229, 514 A.2d 323 (1986), § 2.5  
Crawford v. Calayag, No. FA01-034 44 98 S (Conn. Super. Ct., Danbury, March 22, 2002) 2002 WL 653241, § 5.3  
Crocket v. Pastore, 259 Conn. 240, 246, 789 A.2d 453 (2002), §§ 1.1, 3.2, 6.1  
Cruz v. Cruz, No. CV 00-0341008-S, (Superior Court, Danbury, Dec. 27, 2002), 33 Conn. L. Rptr. 594 at 595, 2002 Conn. Super. LEXIS 4195, 2002 WL 31955020, § 5.1  
D.E.D. v. State, 704 P.2d 774, 780 (Alaska 1985), § 5.5  
Doe v. Doe, 163 Conn. 340, 307 A.2d 166 (1972), §§ 2.0, 3.8  
Doe v. Doe, 244 Conn. 403, 455, 710 A.2d 1297 (1998), § 1.2  
Emerick v. Emerick, 5 Conn. App. 649, 502 A.2d 933 (1985), § 2.4  
Evans v. Santoro, 6 Conn. App. 707, 507 A.2d 1007 (1986), §§ 2.5, 2.6, 3.8  
Faria v. Faria, 38 Conn. Supp. 37, 40, 456 A.2d 1205 (1982), §§ 1.4, 1.6, 2.3 and Tables 1, 7  
Febroriello v. Febroriello, 21 Conn. App. 200, 206, 572 A.2d 1032 (1990), §§ 2.3, 3.3  
Finlay v. Finlay, 148 NE 624, 626 (1925), § 1.0, Table 7  
Ford v. Ford, 68 Conn. App. 173, 789 A.2d 1104 (2002), §§ 1.1, 1.5, 3.9  
Forestiere v. Doyle, 30 Conn. Supp. 284, 288, 31 A.2d 607 (1973), § 3.8  
Foster v. Foster, 33 Conn. L. Rptr. 24 (Conn. Super., New London, Aug. 19, 2002), 2002 Conn. Super. Lexis 2791, *aff'd in part and rev'd in part by* Foster v. Foster, 84 Conn. App. 311 (2004), § 6.1

Foster v. Foster, No. FA01-0558204S (Conn. Super. Ct., New London, Jan. 14, 2003), 2003 Conn. Super. Lexis 139, § 2.2

Freeman v. Freeman, 17 Conn. Supp. 125 (1950), § 2.7

Friedman v. Friedman, 180 Conn. 132, 439 A.2d 823 (1980), § 1.6

Friedrich v. Friedrich, 983 F.2d 1396, 1401 (6<sup>th</sup> Cir. 1993), § 5.0

Friedrich v. Friedrich, 78 F.3d 1060, 1067 (6<sup>th</sup> Cir. 1996), § 5.1

Garrett's Appeal from Probate, 44 Conn. Supp. 169, 187, 677 A.2d 1000 (1994), § 1.1

Gennarini v. Gennarini, 2 Conn. App. 132, 137, 477 A.2d 674 (1984), §§ 1.4, 3.4

Gilman v. Gilman, Docket No. 0121957S (Norwich Super. Ct., May 22, 2001), 2001 WL 688610, 2001 Conn. Super. Lexis 1453, §§ 4.0, 5.3

Goldstein v. Fischer, 200 Conn. 197, 201, 510 A.2d 184 (1986), § 5.3a

Graham v. Graham, No. FA 92 65185 (Conn. Super. Ct., Middlesex at Middletown, Feb. 6, 2002), 2002 WL 241493, § 5.3

Greene v. Thornton, No. FA03 0069920 (Conn. Super. Ct., Putnam, Jan. 13, 2004), 2004 Conn. Super. Lexis 117, § 6.1

Greenwood v. Greenwood, 191 Conn. 309, 464 A.2d 771 (1983), § 1.6

Grynkewich v. McGinley, 3 Conn. App. 541, 545-546, 490 A.2d 534 (1985), § 5.3a

Guillory v. Francks, FA 010065736S (Conn. Super. Ct., Windham at Willimantic, February 14, 2002), 2002 WL 442145, § 5.3

Hall v. Hall, 186 Conn. 118, 124, 439 A.2d 447 (1982), §§ 1.1, 1.6, 2.3, 2.5 and Tables 1, 7

Hamele v. Hamele, 5 Conn. L. Rptr. 795 (Bridgeport Super. Ct. Dec. 31, 1991), 91 WL 288142, 1991 Conn. Super. Lexis 3108, § 3.4.

Harliwich v. Harliwich, No. FA 98-68306 S, 1998 Conn. Super. LEXIS 3401, 1998 WL 867328 (Dec. 3, 1998), § 5.1

Hauge v. Mapley, No. FA01-01871 34 S (Conn. Super. Ct., Stamford J.D., Jul. 17, 2003), 2003 WL 21805487, § 2.7

Heath v. Heath, No. FA91 0117282 S (Conn. Super. Ct., Norwalk at Stamford, Nov. 16, 2000), 2000 WL 1838932, § 5.3

Howarth v. Northcott, 152 Conn. 460, 464 (1965), § 3.8

In re Appeal of Kindis, 162 Conn. 239, 242, 294 A.2d 316 (1972), Chapter 1

In Re Brea B., 75 Conn. App. 466, 473, 816 A.2d 707 (2003), § 1.3

In Re Felicia B., 56 Conn. App. 525, 527, 743 A.2d 1160 (2000), *cert. denied*, 252 Conn. 952 (2000), §§ 2.2, 3.2

In Re Jonathan M., 255 Conn. 208, 223, 764 A.2d 739 (2001), §§ 2.6, 3.8

In Re Kristy L. v. Ragaglia, 47 Conn. Supp. 273, 284, 787 A.2d 679 (2001), §§ 2.6, 6.1

Ireland v. Ireland, 246 Conn. 413, 717 A.2d 676 (1998), §§ 1.1, 1.5, 3.9

Janik v. Janik, 61 Conn. App. 175, 763 A.2d 65 (2000), *cert. denied*, 255 Conn. 940 (2001), § 2.5

Jones v. Jones, Docket No. FA990173261 (Middletown Super. Ct. Nov. 10, 2003). 2003 Conn. Super. Lexis 3369, § 3.9

Kawaller v. Kawaller, Superior Court, judicial district of Hartford-New Britain at Hartford, Docket No. 241310 (July 22, 1986), 1 C.S.C.R. 566, § 3.4

Kelly v. Kelly, 54 Conn. App. 50, 56, 732 A.2d 808 (1999), § 2.5

Kioukis v. Kioukis, 185 Conn. 249, 440 A.2d 894 (1981), § 3.6

Knock v. Knock, 224 Conn. 776, 621 A.2d 267 (1993), §§ 1.1, 1.4, 2.1, 3.4

Laspina-Williams v. Laspina-Williams, 46 Conn. Supp. 165, 171, 742 A.2d 840 (1999), § 3.1

Lehman v. Lycoming County Children's Services Agency, 458 U.S. 502, 102 S. Ct. 3231 (1982), § 2.6

Litvaitis v. Litvaitis, 162 Conn. 540, 544, 295 A.2d 519 (1972), § 5.0

Lord v. Lord, No. CV01 038 02 79 (Conn. Super. Ct., Fairfield at Bridgeport, Aug. 20, 2002), 33 CONN. L. RPTR. 88, 90 (November 4, 2002), 2002 WL 31125621, § 5.3

Lyon v. Lyon, 21 Conn. 199 (1851), § 2.7

Madigan v. Madigan, 224 Conn. 749, 620 A.2d 1276 (1993), § 2.3

Marshak v. Marshak, 226 Conn. 652, 665-666, 628 A.2d 964 (1993), § 5.4 and Table 12

McClure v. Perkins, No. 0548540 (Conn. Super. Ct., New London, July 28, 1999), 25 Conn. L. Rptr. 166, § 6.1

McCrone v. United States, 307 U.S. 61, 64, 59 S. Ct. 685, 686 (1939), § 3.7  
McGinty v. McGinty, 66 Conn. App. 35, 40, 783 A.2d 1170 (2001), § 3.6  
Mohsen v. Mohsen, 715 F. Supp. 1063, 1065 (D.Wyo. 1989), § 5.1  
Muller v. Muller, 43 Conn. App. 327, 333, 682 A.2d 1089 (1996), § 5.3a  
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